

This is an amendment to 16.60.5 NMAC, Section 11 and 14, effective 12/12/2021.

16.60.5.11 RULES OF CONDUCT: In addition to abiding by the AICPA code of professional conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

A. Responses to board communications. The individual applicant, certificate holder, or registration holder of a certificate/license or firm permit shall, when requested by the board, substantively and honestly respond in writing to all communication from the board within thirty days of receipt of board communications. Board communications may be sent by regular mail, registered or certified mail, hand delivered or by commercial courier, to the last known address on record with the board. Board communications may also come by email to the last known email address on record with the board. The individual may respond to the board by regular mail, registered or certified mail, hand delivery, by commercial courier. Email is only a valid response to the board if the original communications from the board was delivered by email.

(1) Failure to respond substantively and honestly to written board communications or failure to furnish requested documentation or working papers constitutes conduct indicating lack of fitness to serve the public as a professional accountant and shall be grounds for disciplinary action.

(2) Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

B. Reportable events. A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

(1) Receipt of a final peer review report indicating "pass with deficiencies" or "fail" or a public company accounting oversight board (PCAOB) firm inspection report containing deficiencies or identifying potential defects in the quality control systems. For the purposes of Subsection B of 16.60.5.11 NMAC, "deficiency reports" are reports indicating either "pass with deficiencies" or "fail" as defined in the AICPA peer review standards.

(2) Receipt of a second consecutive deficiency peer review report.

(3) Imposition upon the license of discipline, including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit, or practice rights by:

(a) the securities and exchange commission (SEC), the PCAOB, or the internal revenue service (IRS); or

(b) another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(c) any other federal or state agency regarding the licensee's conduct while rendering professional services; or

(d) any foreign authority or credentialing body that regulates the practice of accountancy.

(4) The occurrence of any matter reportable that must be reported by the licensee to the PCAOB pursuant to Sarbanes Oxley Action Section 102(b)(2)(f) and PCAOB Rules and forms adopted pursuant thereto.

(5) Notice of disciplinary charges filed by the SEC, the PCAOB, the IRS, or another state board of accountancy, or a federal or state taxing, insurance or securities regulatory authority, or a foreign authority or credentialing body that regulates the practice of accountancy.

(6) Unless prohibited by the terms of the agreement, any judgment, award or settlement of a civil action or arbitration proceeding of \$150,000 or more in which the licensee was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall only notify the board regarding civil judgments, settlements, or arbitration awards directly involving the firm's practice of public accounting in this state.

(7) ~~[Criminal charges, deferred prosecution or conviction]~~ Conviction or plea of no contest to which the licensee is a defendant if the crime is: a criminal conviction listed in Subsection A of 16.60.5.14 NMAC.

~~[(a) any felony under the laws of the United States or of any state of the United States or any foreign jurisdiction; or~~

~~(b) a misdemeanor if an essential element of the offense is dishonesty, deceit, or fraud.]~~

C. Frivolous complaints. An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule.

D. Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support, the board or its legally authorized designee shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

E. Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

F. A CPA firm permit holder shall display the firm permit in a clearly visible place to the public in the office or space for which the permit is issued. The license(s) of the qualifying CPA and any licensed CPA employee or CPA associated with the firm shall be displayed in a clearly visible place to the public in the office or space for which the firm permit is issued/registered. Any licensed CPA or firm permit holder shall provide a copy of their license or firm permit upon request.

[16.60.5.11 - Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 2/14/2002; A, 6/30/2008; A, 1/1/2011; A, 1/17/2013; A, 9/15/2015; A, 10/1/2020; A, 12/12/2021]

16.60.5.14 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(1) Crimes involving homicide, murder, manslaughter, or resulting in death;

(2) crimes involving human trafficking, or trafficking in controlled substances;

(3) kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

(5) crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, injury to pregnant woman, custodial interference, breaking and entering, sabotage, property damage, or financial exploitation;

(6) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud or unauthorized use of a credit card; receiving stolen property, money laundering, burglary tools, or stolen vehicles;

(7) crimes involving arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;

(8) crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;

- (9) violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;
- (10) violations of the Model State Commodity Code, the New Mexico Uniform Securities Act, the Mortgage Loan Company Act, Uniform Money Services Act, or the New Mexico Mortgage Loan Originator Licensing Act;
- (11) crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;
- (12) crimes involving jury tampering;
- (13) crimes involving escape from custody, jail or penitentiary;
- (14) crimes involving harboring or aiding a felon;
- (15) crimes involving tax evasion or tax fraud;
- (16) willful failure to collect and pay over taxes;
- (17) crimes involving attempts to evade or defeat any tax;
- (18) crimes involving violations of officers or employees engaging in the administration of the property tax who buy property sold for delinquent property taxes that is unlawful;
- (19) crimes involving paying or receiving public money for services not rendered;
- (20) crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;
- (21) crimes involving violations of the Cigarette Enforcement Act;
- (22) crimes involving the Savings and Loan or the Credit Union Act;
- (23) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;
- (24) Medicaid fraud,
- (25) an act or omission , with intent to defraud, expressly declared to be unlawful by the Banking Act,
- (26) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;
- (27) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
- (28) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;
- (29) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom they contracted;
- (30) crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;
- (31) crimes involving making or permitting a false public voucher;
- (32) crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;
- (33) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so, or violations of the New Mexico Uniform Securities Act;
- (34) crimes involving extortionate extensions of credit or racketeering;
- (35) crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;
- (36) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;
- (37) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (38) crimes involving the practice of medicine, dentistry or osteopathic medicine without a license or authorization of the appropriate regulating authority;

(39) fourth or subsequent driving under the influence of intoxicating liquor or drugs;
(40) crimes involving controlled substances, including violations of the Controlled Substances Act;
(41) crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;
(42) crimes involving violations of the New Mexico Subdivision Act or the Mortgage Foreclosure Consultant Prevention Act;
(43) misuse of funds;
(44) intent to defraud uses on a public security or instrument of payment;
(45) crimes involving a violation of the Governmental Conduct Act; or
(46) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.
B. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.
E. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:
(1) an arrest not followed by a valid conviction;
(2) a conviction that has been sealed, dismissed, expunged or pardoned;
(3) a juvenile adjudication; or
(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.60.5.14 NMAC - N, 12/12/2021]