

This an amendment to 16.39.7 NMAC, Part Name and Sections 7, 8 and 9, effective 3/12/2022.

PART 7 MISC - PROCEDURES FOR ISSUANCE, REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF CERTIFICATES AND DISCIPLINARY ACTION

16.39.7.7 **DEFINITIONS:** ~~[RESERVED]~~ “disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.39.7.7 NMAC - Rp, 16 NMAC 39.7.7, 1/01/2002; A, 3/12/2022]

16.39.7.8 **ISSUANCE, REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF LICENSES AND CERTIFICATES AND DISCIPLINARY ACTION:**

A. The board may impose fines as may be determined by the nature of the violation pursuant to Section 61-23-24 and 61-23-27.11 NMSA 1978.

B. A lost, mutilated or destroyed certificate shall be replaced only upon the written request of the licensee and payment of the required fee. The reissued certificate shall show the original license number and original date, shall be signed by the current chair and secretary of the board in office at that date, and shall carry the notation “reissued (DATE).”

[16.39.7.8 NMAC - Rp, 16 NMAC 39.7.8, 1/01/2002; A, 7/01/2015; A, 3/12/2022]

16.39.7.9 **VIOLATIONS:**

A. For business entities using the words “engineering” or “surveying” in their titles or offering engineering or surveying services, the board's executive director shall write the business entity, enclosing an affidavit to be completed which identifies the member of the business entity who is licensed to practice in the state of New Mexico and who is an employee of and legally able to bind the business entity by contract. If no response to this request is received within 30 days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response 30 days from the receipt of a refusal, the matter may be turned over to the attorney general's office for action.

B. It shall be considered “a violation” under Paragraph (1) of Subsection A of Section 61-23-24 NMSA 1978 and Paragraph (1) of Subsection A of Section 61-23-27.11 NMSA 1978 of the Engineering and Surveying Practice Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules. It shall also be considered “a violation” under Subsection A of Section 61-23-23.1 NMSA 1978 and Subsection A of Section 61-23-27.15 NMSA 1978 of the Engineering and Surveying Practice Act for any person to act in the capacity of a professional engineer or a professional surveyor without being licensed by the board.

C. The practice or offer to practice engineering by a licensee of the board in any state, territory or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board. The practice or offer to practice surveying by a licensee of the board in any state, territory, or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board.

D. Each applicant or licensee shall notify the board, in writing, within 90 days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, ~~[whether] which~~ is a felony ~~[misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is]~~ directly related to the practice of engineering or surveying as listed in Subsection F of 16.39.7.9 NMAC.

E. The board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for non-payment of child support.

F. Criminal Convictions:

(1) Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, that may disqualify an applicant from receiving licensure, or disciplinary action including but not limited to suspension or revocation:

(a) crimes involving homicide, murder, manslaughter, or resulting in death;

(b) crimes involving human trafficking, or trafficking in controlled substances;
(c) kidnapping, false imprisonment, assault, aggravated assault, battery, aggravated battery;
(d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;
(e) crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, injury to pregnant woman, custodial interference, property damage, or financial exploitation;
(f) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud, unauthorized use of a credit card; receiving stolen property, money laundering, burglary tools, or stolen vehicles;
(g) crimes involving arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;
(h) crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;
(i) violation of Partial-Birth Abortion Ban Act;
(j) crimes involving bribery, intimidating witnesses, 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;
(k) crimes involving jury tampering;
(l) crimes involving escape from custody, jail or penitentiary;
(m) crimes involving harboring or aiding a felon;
(n) crimes involving tax evasion or tax fraud;
(o) crimes involving violations of the Mortgage Foreclosure Consultant Fraud Prevention Act, or the Savings and Loan Act;
(p) crimes involving the Credit Union Act;
(q) 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;
(r) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;
(s) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
(t) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;
(u) 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 he contracted;
(v) 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;
(w) crimes involving making or permitting a false public voucher;
(x) crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;
(y) 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;
(z) crimes involving extortionate extensions of credit;
(aa) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;
(bb) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(cc) crimes involving the practice of medicine, dentistry or osteopathic medicine without a license or authorization of the appropriate regulating authority;

(dd) 4th or subsequent driving under the influence of intoxicating liquor or drugs;

(ee) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

(2) The board shall not consider the fact of a criminal conviction as part of an application for licensure, or license renewal, unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(3) The board shall not deny, suspend, or revoke a license, or impose disciplinary action on a licensee on the sole basis of a criminal conviction, unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(4) 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 Engineering and Surveying Practice 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 Paragraph (1) of Subsection F of 16.39.7 NMAC.

(5) In connection with an application for licensure or a license renewal, or disciplinary action, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(a) an arrest not followed by a valid conviction;

(b) a conviction that has been sealed, dismissed, expunged or pardoned;

(c) a juvenile adjudication; or

(d) a conviction for any crime other than the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

[16.39.7.9 NMAC - Rp 16 NMAC 39.7.9, 1/01/2002; A, 7/01/2006; A, 7/01/2015; A, 12/28/2017; A, 3/12/2022]