

NEW MEXICO PUBLIC ACCOUNTANCY BOARD
RULES HEARING

August 11, 2015
11:55 a.m.
5200 Oakland, NE
Albuquerque, New Mexico 87110

REPORTED BY: Amy M. Drum, RPR, NM CCR #49
KATHY TOWNSEND COURT REPORTERS
110 Twelfth Street, NW
Albuquerque, New Mexico 87102

1 CHAIRMAN EMMONS: We call to order the
2 rule-making hearing. This is a public rule-making
3 hearing of the New Mexico Public Accountancy Board.
4 This hearing will please come to order at 11:55 a.m. on
5 August 11th, 2015, at the New Mexico Regulation
6 Licensing Department, 5200 Oakland Avenue, Northeast,
7 Albuquerque, New Mexico, to hear public testimony
8 regarding proposed additions or amendments to Chapter
9 60 of the New Mexico Administrative Code, or NMAC.

10 I am Board Member C. Jack Emmons, who will
11 preside over this hearing. Members of the Board
12 present are Benjamin Roybal, Bill Golden, Dennis
13 Houston, Farley Vener and myself. Absent are Maria
14 Cassmont and Patrick Stewart. Assistant Attorney
15 General Susan Sullivan will advise the Board and
16 presiding officer in this matter. In addition to the
17 Board, staff members Ernesto Santucci, Jeanette
18 Cassimus, and Jessica Chavez-Lance are also present.

19 If members of the audience have not already done
20 so, please sign in on the attendance sheet at the front
21 door.

22 This hearing is being conducted pursuant to the
23 provisions of the Uniform Licensing Act, Section
24 61-1-29, that require a public hearing be held to allow
25 interested persons a reasonable opportunity to give

1 their views in writing or orally regarding proposed
2 additions or amendments to, or repeal of, any rule or
3 regulation under the Board's authority.

4 The Open Meetings Act, Section 10-15-1(a),
5 mandates that this Board take action on the proposed
6 rules at a properly convened open meeting. This
7 hearing is being audio recorded. If anyone would like
8 a copy of the audio of today's hearing, please contact
9 the Board's administrative secretary after the hearing.

10 Copies of the proposed rules were available at
11 the Board office and on the Board's website for review
12 and comment by interested persons prior to today's
13 hearing. Copies of the proposed rule are available
14 today on the table over by the door.

15 We will proceed with the hearing, entering
16 exhibits into evidence, reading or summarizing each
17 part of the proposed rules, and taking testimony and
18 comments on each part from those members of the
19 audience wishing to testify.

20 I remind those testifying that this hearing is
21 being recorded. I ask that before speaking, you come
22 forward to the witness table at the front of the room,
23 identify yourself and whom you represent. Please
24 identify yourself by name each and every time you
25 speak. Please speak loudly and clearly so that the

1 tape recorder can record what you are saying. Please
2 do not speak from your seat in the audience because the
3 court reporter cannot record your testimony.

4 After each witness has testified, I will permit
5 anyone in the audience to question the witness. The
6 Board members will also be allowed to question all of
7 the witnesses. The Public Accountancy Board does not
8 follow the Rules of Evidence as used in the courts, but
9 does limit testimony that is irrelevant, redundant, or
10 unduly repetitious. The decision as to whether such
11 testimony is irrelevant, redundant, or unduly
12 repetitious will be made by me as the presiding
13 officer.

14 At this time, I will admit into evidence the
15 following exhibits: Exhibit 1, the Albuquerque Journal
16 legal notice of these rules of the hearing published on
17 June 13th, 2015; Exhibit 2, the New Mexico Registered
18 Notice of Rule-Making published on May 29, 2015;
19 Exhibit 3, the proposed Rule 16.60.1 NMAC, "General
20 Provisions"; Exhibit 4, proposed rule 16-60.3, NMAC,
21 "Licensure and Continuing Professional Education
22 Requirements"; Exhibit 5, proposed Rule 16.60.4 NMAC,
23 "Firm Permit Applications, Renewal, Reinstatement and
24 Notification Requirements"; and Exhibit 6, proposed
25 Rule 60.60.5 NMAC, "Rules of Conduct."

1 Any person wishing to submit exhibits with his
2 or her comments shall do so when he or she is
3 recognized to testify. At that time those exhibits
4 will be numbered and marked and entered into the record
5 of today's hearing. The proposed rules, Parts 1, 3, 4,
6 and 5, will be presented and considered one by one.
7 The Board will take testimony, including comments,
8 suggestions, questions, clarifications, and so on after
9 each proposed rule is presented.

10 In addition to taking testimony from the
11 audience, the Board will discuss the proposed rule and
12 testimony and exhibits received into the record today.
13 Again, each person testifying on any rule is subject to
14 questioning by any other member of the audience or the
15 Board.

16 At this time, I will present by summarizing each
17 rule. Proposed Rules 16.60.1 NMAC, "General
18 Provisions": 16.60.7 clarifies that if you say you are
19 a CPA, you must have a CPA certificate. The reason for
20 this is what persons are holding themselves out to be.
21 63-15 covers any service, public or private -- because
22 we've had situations where people working for a school
23 or a private entity or an agency have held themselves
24 out as a CPA.

25 This changes the rules to say anytime you report

1 that you are a CPA, you must be one and be registered.
2 And it also covers the mobility of the individual.
3 15-B-1 covers inactive. Those are the general
4 provisions provided for under Exhibit 1.

5 Any questions/comments for the "General
6 Provisions"?

7 MR. GOLDEN: The last part is 16.60.1?

8 CHAIRMAN EMMONS: 16.60.1.

9 MR. GOLDEN: .7. So it's the definitions?

10 CHAIRMAN EMMONS: The definitions, yes.

11 MR. GOLDEN: So that's all we're addressing
12 right now?

13 CHAIRMAN EMMONS: Yes. The blue is the
14 change. The black is as it was.

15 MR. ROYBAL: The red.

16 CHAIRMAN EMMONS: I have blue.

17 MR. HOUSTON: I have red. The red, okay.

18 MR. GOLDEN: And you've gone through --
19 what number is that, or what letter? Is that
20 everything on 16.60?

21 CHAIRMAN EMMONS: It gets renumbered
22 because we shifted things up. There's no change on --

23 MR. GOLDEN: Didn't T also clarify the
24 change to reports and include agreed-upon procedures
25 encompassing that as a report?

1 CHAIRMAN EMMONS: Yes.

2 MR. GOLDEN: Which before was not defined?

3 CHAIRMAN EMMONS: Not defined.

4 MR. GOLDEN: Okay.

5 CHAIRMAN EMMONS: That was an attempt to
6 cover the attest function. Though it's not covered in
7 the Act, we covered it by rule, the new agreed-upon
8 procedures.

9 We also added under J that -- something we've
10 been doing that is not in the rules, but name change
11 due to marriage, divorce, or any reason, the
12 replacement license will be \$130. We were charging
13 \$130, but it was not covered in the rules anywhere. So
14 this is just to document that.

15 The comments you made earlier under I, it was --
16 there was no fee charged for the firm reinstatement,
17 there is now a fee in another section in the fines for
18 reinstatement.

19 Other questions on Exhibit 3?

20 I'll move on to Exhibit 4. Exhibit 4, 16.60.3
21 NMAC, "Licensure and Continuing Professional Education
22 Requirements." Under 16.63-15.1, you remember we were
23 trying to come up with a proration of the first year
24 when a person became a CPA, on the day they came a CPA
25 until their birthday, how many months we would prorate

1 for CP requirements for the 40 hours. It was decided
2 that we just have no proration in the first year. So
3 they could have anywhere from a month to 11 months of
4 CPE. They don't have to report the first year. The
5 first year after their birthday, they have, just like
6 everybody else, a full year.

7 16.63-15.5 E and F takes the fine out of the CPE
8 area, and we covered it in the "Fine" area.

9 16.63-15.B makes reactivation after ten years to
10 come to the Board, and it eliminates the rules from the
11 old transposition from the paper test to the computer
12 test. That's no longer in effect. We're all on the
13 computer now.

14 16.63-15.D, as in dog, establishes the date that
15 a CPE is allowed for a peer review. It seemed that the
16 people were taking the credit -- they get 24 hours for
17 a system review. They were taking the credit for the
18 year that does them the most good. So we wanted some
19 consistency. So we're changing it to the date the peer
20 review was done, which was the date of the review of
21 the report. That's the year you have to claim the CPE,
22 because that's when you actually encounter.

23 MR. GOLDEN: Get to, not have to.

24 CHAIRMAN EMMONS: They get to, yes.

25 In 16.63-15F, it specifies exactly what CPE

1 documentation has to be provided to the Board. So we
2 no longer have to argue with CPAs about what they have
3 to provide to document their CPE. I'll give you-all a
4 little time to review all those for any questions.

5 MR. VENER: One question. If you have an
6 in-house CPE, I think one of the rules at the national
7 level is you must have a sign-in document. And I
8 didn't know if that's something we're requiring or is
9 that just -- do we just accept that at the national
10 level, or certification of the CPE or --

11 CHAIRMAN EMMONS: Okay.

12 MR. VENER: So I guess you document the
13 participation, that would probably meet that
14 requirement.

15 CHAIRMAN EMMONS: Yeah, and retain the
16 evidence for five years. We've had CPE audits where we
17 have to go back three years, and they've said, "Well,
18 I've thrown them away." No, you can't do that. You
19 have to keep them for five years.

20 MR. VENER: So we're not necessarily taking
21 this language and go, "Retain documents of
22 participation"?

23 CHAIRMAN EMMONS: Right.

24 MR. VENER: If we say document their
25 participation, that would be a CPE certificate?

1 CHAIRMAN EMMONS: Yes.

2 Any other comments or questions for Exhibit 4?
3 If not, we'll move on to Exhibit 5, 16.4 NMAC, "Firm
4 Permit, Application, Renewal, Reinstatement." 16.64.8
5 clarifies that each office needs a firm permit. The
6 reason for that is on the application it tells us what
7 CPA is responsible for that office, and so if we have
8 any complaints pending on that office, we need to know
9 who to go to. So every office needs a firm permit.

10 64.11 is a long section, but it all has to do
11 with peer review, and so 64.11 was merged into and
12 combined with 64.10. We didn't change anything, we
13 just moved it, 64.11 into .10.

14 MR. GOLDEN: Somebody had an interesting
15 question about the firm permit. And you know the guy
16 involved, but he has about a \$30,000 mobile home with
17 an office in it, and he goes from one city to another
18 city. How many firm permits does he need?

19 CHAIRMAN EMMONS: I think he has to have a
20 home somewhere. He's got one in his office.

21 MR. GOLDEN: He has to park it somewhere.

22 CHAIRMAN EMMONS: I guess he has to have
23 a --

24 MR. GOLDEN: Yeah.

25 CHAIRMAN EMMONS: One thing that I'll point

1 out under 60.64.10-A2, as you all know, the AICPA's
2 preparation of financial statements without a report --
3 and I'm kind of going under arguing with peer review --
4 some states are not putting it under peer review, some
5 are. We are changing this rule not to have it under
6 peer review. The old SAR 8 -- the old SARs 8.

7 MR. GOLDEN: I'm still uncomfortable with
8 that, I'll tell you right now. I think it's a
9 prescription for disaster, but maybe not our disaster.

10 CHAIRMAN EMMONS: That's the AICPA that
11 we're following.

12 MR. GOLDEN: I know. And there -- you
13 know, and I really want to ask a question -- you would
14 know better than anybody -- are they doing that just so
15 they can allow a lot of these guys to not have to go
16 through peer review?

17 CHAIRMAN EMMONS: If you do a preparation
18 of financial statement -- let's, first of all, say what
19 that is. That is where you don't put a report with it,
20 you don't put your name with it, you just print
21 financial statements -- you no longer have to have that
22 under peer review.

23 MR. GOLDEN: But your name can't be
24 associated with it in any way.

25 CHAIRMAN EMMONS: It can't be associated

1 with it in any way. I think most firms that do that
2 are going to have to sooner or later prepare one for
3 the bank, and the bank has to have a report on it if it
4 goes to a third party, and that would make it subject
5 to peer review.

6 MR. VENER: But this seems like it's just
7 helping somebody prepare financial statements. You
8 could just go in and -- that's a non-attest service.

9 CHAIRMAN EMMONS: As long as you don't
10 associate your name with it.

11 MR. GOLDEN: Of course, I believe there
12 ought to be peer review across the board.

13 CHAIRMAN EMMONS: As a side comment, we're
14 planning on doing that next year.

15 MR. HOUSTON: So it sounds like -- the way
16 I'm interpreting that is this is the preparation of the
17 financial statement for the client, for the internal
18 use by the client, not being used third-party use?

19 CHAIRMAN EMMONS: Exactly. And that is the
20 definition that's in the AICPA standards, preparation
21 of the financial statement.

22 MR. GOLDEN: You can't control what the
23 client is going to do with it, and you know he's going
24 to take it to a bank somewhere, and he's going to say,
25 "Oh, yeah, William R. Golden's office, he's doing this

1 stuff," and then here we go.

2 CHAIRMAN EMMONS: But the AICPA has the
3 lead and we're following.

4 MR. VENER: And then one day the bank will
5 be upset and they'll sue somebody and then we'll change
6 the rule.

7 MR. GOLDEN: You know, I just know myself.
8 It's a COP statement. There could be more misleading
9 stuff than you can imagine. And I'm not looking for
10 it. I'm not paid to look for it. Something comes to
11 my attention that makes it inherently misleading, I
12 won't have anything to do with it, but I'm not asking
13 any questions, you know. We're sort of just cranking
14 it out. You want more, you better ask for a review.

15 CHAIRMAN EMMONS: Any other comments,
16 questions, gripes?

17 We'll move on to Exhibit 6. Exhibit 6
18 eliminates the rule numbers in the Code of Ethics to
19 comply with the new AICPA Code of Ethics. 60.65.15
20 adds language. It clarifies what a CPA can do in
21 New Mexico and if licensed in another state or what you
22 can't do if you're inactive or retired.

23 MR. GOLDEN: What section number is that?

24 CHAIRMAN EMMONS: 60.65.13. It's the very
25 last page there.

1 MR. GOLDEN: "Unauthorized Use of CPA
2 Title"?

3 CHAIRMAN EMMONS: Yeah.

4 MR. GOLDEN: Mr. Chairman, there's
5 something in here that was never discussed, and I don't
6 know how it got here.

7 CHAIRMAN EMMONS: Okay.

8 MR. GOLDEN: And since I was party to the
9 agreement that was made in the legislature about this
10 single issue, I just don't -- you know, I have to
11 vehemently oppose it being in here. It says, "However,
12 anyone residing in the state that is not licensed by
13 the New Mexico Public Accountancy Board as a CPA are
14 not granted practice privilege by 61.28-B-26," which it
15 wasn't -- that wasn't designed to grant practice
16 privilege -- "is restricted from using the term
17 accountant mixed with his or her name on all reports
18 and letters." The statute doesn't say it. We agreed
19 specifically with the legislature not to do this.

20 CHAIRMAN EMMONS: Shouldn't it say,,
21 "certified public accountant" and not "accountant"? We
22 can't regulate non-CPAs.

23 MR. GOLDEN: It says "accountant."

24 CHAIRMAN EMMONS: I know it says that, but
25 I'm saying should that rule say "certified public

1 accountant"?

2 MR. GOLDEN: I think it should.

3 CHAIRMAN EMMONS: I think so, too. Between
4 the term "accountant," put "certified public."

5 MR. ROYBAL: So we are making amendments to
6 the rule?

7 MS. SULLIVAN: We are making amendments to
8 the rule.

9 CHAIRMAN EMMONS: Can we do that? Does
10 that rule have to go back through the process?

11 MS. SULLIVAN: And I think it has to go
12 back.

13 MR. ROYBAL: Well, they haven't received
14 notice of that rule in that form.

15 CHAIRMAN EMMONS: Only one section of the
16 NMAC. Are the rest okay if we approve them?

17 MS. SULLIVAN: You can approve -- everyone
18 had notice of these changes, so you're making some of
19 the changes, but you're just not --

20 CHAIRMAN EMMONS: It's actually a typing
21 error. They left the words out. We all know it should
22 have been "certified public."

23 MR. ROYBAL: You don't want to take a
24 chance. I think what we should do as a Board is
25 approve everything that was noticed properly and carve

1 that out and just renote it on another date with the
2 corrections needed to conform to the repeal with the
3 legislature.

4 CHAIRMAN EMMONS: Because later on in that
5 same paragraph, it says what it should be.

6 MR. MCBAIN: Mr. Chairman, the words in
7 parentheses where it says "accountant" only, you want
8 to change the term to "public accountant"?

9 CHAIRMAN EMMONS: Yeah. The one, two,
10 three, fourth line down is "restricted to using the
11 term 'accountant' in connection with his or her name in
12 all reports."

13 MR. MCBAIN: So you want to change that to
14 "certify public accountant."

15 CHAIRMAN EMMONS: Certified public
16 accountant. We can't regulate non-CPAs.

17 MR. SANTUCCI: I'm concerned. It says if
18 they're not licensed by the New Mexico Public
19 Accountancy Board as a CPA, nor granted practice
20 privilege, they are restricted to using the term
21 'CPA.'" Well, if they're not CPAs, they're not granted
22 practice privilege. Why are we restricting them to
23 using "CPA"?

24 MR. GOLDEN: 61.28.B.26 is all about
25 certified public accountants from another state. And

1 so, you know, it's not --

2 CHAIRMAN EMMONS: What Ernest is saying is
3 if you're not a CPA and you're not granted the
4 privilege, you can only use the word "accountant."

5 MR. SANTUCCI: That's what it says, but you
6 want it to say "CPA."

7 CHAIRMAN EMMONS: Is that right? If you're
8 not a CPA and you're not in that privilege, you can
9 only use the word "accountant"?

10 MR. SANTUCCI: You just can't say
11 "certified public accountant." So maybe how it's
12 written is okay.

13 CHAIRMAN EMMONS: Yeah. So it says you can
14 use "accountant," but you can't use "certified public."

15 MS. SULLIVAN: Okay. I see what you're
16 saying.

17 MR. ROYBAL: I think Ernest is right.

18 MS. SULLIVAN: I think Ernest is right, as
19 well. What this sentence is actually saying --
20 Mr. Chair, may I?

21 CHAIRMAN EMMONS: Yes, please.

22 MS. SULLIVAN: Thank you, Mr. Chair.

23 MR. GOLDEN: Oh, okay.

24 MS. SULLIVAN: What the sentence is saying
25 is that --

1 CHAIRMAN EMMONS: I got it.

2 MS. SULLIVAN: -- when you're not a CPA,
3 you're restricted to using the term "accountant."

4 CHAIRMAN EMMONS: Yes.

5 MS. SULLIVAN: It would probably have been
6 better written if we'd say, "you may not use the
7 definition 'certified public accountant.'"

8 CHAIRMAN EMMONS: You can only use
9 "accountant."

10 MR. GOLDEN: Under that circumstance, then
11 I think we'll have to live with it, because it does
12 keep people from saying "public accountant."

13 CHAIRMAN EMMONS: Certified public
14 accountant, public accountant.

15 Nice point, Ernest. I think you're right. God,
16 it gets me to say that.

17 MR. SANTUCCI: I don't want to have to go
18 after the bookkeepers.

19 MR. MCBAIN: Mr. Chair, also before we move
20 on, there was on 16.60.3.9 --

21 CHAIRMAN EMMONS: Which exhibit was that
22 in?

23 MR. MCBAIN: That's going to be Exhibit 2,
24 I believe.

25 MR. GOLDEN: Will you read the section

1 number again?

2 MR. MCBAIN: 60.60.4.

3 CHAIRMAN EMMONS: Exhibit 4.

4 MR. MCBAIN: Then it's E-28. It's going to
5 be page -- the back of page 2. It's E.28. We had
6 someone from the public send an e-mail of an inquiry
7 about this.

8 CHAIRMAN EMMONS: D?

9 MR. MCBAIN: E.

10 CHAIRMAN EMMONS: Why is there a line
11 through there?

12 MR. MCBAIN: That was a change that just
13 seems to not be highlighted. It was a line that "less
14 than one year and" was scratched off. I believe you
15 were going to make it "no more than three years."

16 CHAIRMAN EMMONS: Right.

17 MR. MCBAIN: Well, a James Carroll sent in
18 an e-mail stating that one of those "no's" needs to be
19 taken out. I think it's just something to bring up
20 with the Board.

21 MR. ROYBAL: That's the no-no you were
22 talking about.

23 MR. MCBAIN: "No less than one year" and
24 then "no more," so one of the "no's" does need to be
25 scratched out. I think that's just a clerical change,

1 it doesn't affect the rule itself, but just to bring it
2 before the Board.

3 CHAIRMAN EMMONS: Great. Over a period
4 of -- because we had a lady who, at 2,700 or 2,800
5 hours -- she was two weeks short of a year. We
6 couldn't give her a license because it hadn't been over
7 a year.

8 MR. MCBAIN: Thank you, Mr. Chairman.

9 CHAIRMAN EMMONS: Back to Exhibit 6, then.
10 Are we happy with that?

11 MR. GOLDEN: It works. I understand it.

12 MR. HOUSTON: Had to read it twice.

13 MR. GOLDEN: And some judge will decide it
14 so differently than all of that anyway.

15 CHAIRMAN EMMONS: Good. If there's nothing
16 further and no one has anyone else to add to the
17 testifying and discussion of those rules, I will call
18 an end to the testimony of today's hearing. The
19 attendance sheet will be marked Exhibit Number 7 and
20 entered into the record.

21 The testimony and comments submitted and heard
22 at today's rules hearing will be considered and
23 discussed by the Board during an open public meeting
24 immediately following today's hearing, and the Board
25 will formally vote on those rules during the public

1 meeting. The public is informed that the rules
2 announced today become effective 30 days after they are
3 filed in the State Record Center and archived. These
4 adopted rules will also be published in the New Mexico
5 Registry. The record of this hearing is now closed and
6 this hearing is adjourned at 12:22. I thank everyone
7 for their time and testimony today.

8 (The proceedings concluded at 12:22 p.m.)
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NEW MEXICO PUBLIC ACCOUNTANCY BOARD
RULES HEARING

REPORTER'S CERTIFICATE

I, AMY M. DRUM, RPR, NM CCR #49, DO HEREBY
CERTIFY that on August 11, 2015, the Proceedings in
the above-captioned matter were taken before me, that
I did report in stenographic shorthand the
Proceedings set forth herein, and the foregoing pages
Are a true and correct transcription to the best of
my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted
by the rules) any of the parties or attorneys in this
case, and that I have no interest whatsoever in the
final disposition of the case in any court.



AMY M. DRUM, RPR
New Mexico CCR #49
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