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NEW MEXICO BOARD OF LICENSURE FOR  
PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS  
RULE HEARING

TRANSCRIPT OF PROCEEDINGS

Friday, March 27, 2015  
10:10 a.m.

Department of Transportation, District 3  
7500 Pan American, Northeast  
Albuquerque, New Mexico 87109

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A P P E A R A N C E S

The Board:

- PAUL BRASHER, PE (CHAIRMAN)
- JULIE SAMORA, PE
- CLIFFORD SPIROCK
- KARL TONANDER
- JOSHUA SKARSGARD (PUBLIC MEMBER)
- GLEN THUROW, PS
- RICK WORD, ESQ. (GENERAL COUNSEL)
- RONALD BOHANNAN, PE
- DAVID COOPER, PS
- AUGUSTA MEYERS (PUBLIC MEMBER)
- ROLA IDRIS, Ph.D., PE

1 P R O C E E D I N G S

2 CHAIRMAN BRASHER: Good morning everybody. This is  
3 the New Mexico Board of Licensure for Professional Engineers  
4 and Professional Surveyors. This is our rule hearing. Today  
5 is March 27th, 2015. The time is 10:10. We are meeting at the  
6 offices of the New Mexico State Department of Transportation,  
7 District 3, in Albuquerque, at 7500 Pan American, Northeast.  
8 This hearing will now come to order.

9 I'm Paul Brasher. I'm chair of the board of the  
10 New Mexico Board of Licensure for Professional Engineers and  
11 Professional Surveyors. I'll be acting as the presiding  
12 officer for this rule hearing. The purpose of this hearing is  
13 for the board to receive public comment on proposed amendments  
14 to the board's current rules and regulations. The board  
15 welcomes everyone present at this meeting. We appreciate  
16 everybody taking the time to come and be with us this morning.

17 This hearing is being conducted pursuant to and  
18 in accordance with the provisions of the New Mexico Engineering  
19 and Surveying Practice Act, NMSA. 1978, Chapter 61, Article 23,  
20 Section 10; the Open Meetings Act, Article 15, Sections 10-15-1  
21 through 10-15-4; and the Uniform Licensing Act, NMSA 1978,  
22 Section 61-1-1 through 61-1-33. The New Mexico Lobbyist  
23 Regulation Act regulates activities before boards and  
24 commissions and rule making proceedings. You should contact  
25 the Secretary of State's office for information and

1 registration.

2 A public notice of this hearing was advertised in  
3 the New Mexico Register on February 13th, 2015, and in the  
4 Albuquerque Journal on February 22nd, 2015. Copies have been  
5 available from the board office in Santa Fe since the notices  
6 were published and are available to the public attending this  
7 hearing. Copies of the proposed rules were available from the  
8 board office and the board website.

9 I'd like to remind everybody at this point to  
10 sign in. We have an attendance sheet in the back somewhere  
11 which will later be entered into this proceeding as an exhibit  
12 and will become a record of this hearing. So let me just ask  
13 everybody, has everybody signed in? Okay. Thanks for doing  
14 that. Samantha, if you would get that sign-in sheet, and if  
15 somebody comes in late, be sure that they sign in. That would  
16 be appreciated. Where is the sign-in sheet right now? Okay.

17 As we proceed here -- before we proceed, let me  
18 ask the acting executive director of the board, Mr. Perry  
19 Valdez, to call the roll of the board members present for the  
20 hearing.

21 MR. VALDEZ: Paul Brasher?

22 CHAIRMAN BRASHER: Present.

23 MR. VALDEZ: Glen Thurow?

24 MR. THUROW: Present.

25 MR. VALDEZ: Joshua Skarsgard? Ronald Bohannan?

1 MR. BOHANNAN: Present.

2 MR. VALDEZ: August Meyers?

3 MS. MYERS: Present.

4 MR. VALDEZ: Dr. Rola Idriss?

5 DR. IDRIS: Present.

6 MR. VALDEZ: Cliff Spirock?

7 MR. SPIROCK: Here.

8 MR. VALDEZ: Julie Samora? David Cooper?

9 MR. COOPER: Present.

10 MR. VALDEZ: Karl Tonander?

11 MR. TONANDER: Present.

12 MR. VALDEZ: Mr. Chair, we have a quorum.

13 CHAIRMAN BRASHER: Thank you, Mr. Valdez. Let the  
14 record show that Mr. Rick Word, Assistant Attorney General and  
15 general counsel for the board is present here to advise the  
16 board. For the record, Mr. Word is counsel for the board.

17 This is a formal proceeding. Our court reporter  
18 today is Chris Sanchez with New Mexico Depo and he has been  
19 contracted to record the proceedings as is the usual procedure.  
20 The court reporter will record the proceedings and the  
21 transcript will become part of the rule hearing record.  
22 Therefore, persons recognized to address the board are asked to  
23 identify yourself for the record each time you address the  
24 board and speak loudly and clearly enough so that the recorder  
25 can pick up your comments.

1                   This is the way we are going to conduct the  
2 hearing. Mr. Valdez, the acting executive director of the  
3 board, will present exhibits to the board. I, as the presiding  
4 officer, will rule on the admissibility of the exhibits offered  
5 for admission after allowing some questions from members of the  
6 board. The exhibits admitted into evidence are available for  
7 review by members of the public; however, these exhibits may  
8 not be removed from the room. You can look at them; you just  
9 can't take them away.

10                   After Mr. Valdez office exhibits and their  
11 admission has been ruled on, I'll open the hearing for comments  
12 from the audience. We'll proceed in numerical sequence through  
13 each proposed rule. We will address only one rule at a time.  
14 However, you may refer to other rules that reasonably relate to  
15 the rule being discussed or which relate to your comments. The  
16 New Mexico Board of Licensure for Professional Engineers and  
17 Professional Surveyors does not follow the Rules of Evidence,  
18 but shall, in the interest of efficiency, reserve the right to  
19 limit all testimony deemed irrelevant, redundant or unduly  
20 repetitious. The decision as to whether such testimony is  
21 irrelevant, redundant or unduly repetitious shall be made by me  
22 as the presiding officer.

23                   Now, if I could, may I have a show of hands of  
24 the individuals who intend to testify or comment on the  
25 proposed rules? Okay. I see three. We'll limit testimony --

1 we'll start off limiting testimony to something like five  
2 minutes or so. So if you have a comment, if you could keep it  
3 concise and brief, that would be helpful. It would help us be  
4 able to follow your train of thought.

5 After you've testified or commented, I'll offer  
6 the board members the opportunity to question you if they'd  
7 like to. Any member of the audience wishing to question any  
8 other person may do so after being recognized by me as the  
9 presiding officer. Each person recognized to speak shall  
10 identify him or herself for the record.

11 At the conclusion of this rule hearing, the board  
12 will hold its meeting where we will conduct discussions and  
13 take final action such as amending, adopting or tabling, and so  
14 forth, actions on the rules.

15 Okay. The time is 10:19 and the public hearing  
16 is now open. I would like to ask Mr. Valdez at this time, do  
17 you have exhibits to enter into evidence for us?

18 MR. VALDEZ: Mr. Chair, Mr. Paul Brasher, members of  
19 the board, I have the following exhibits to enter into  
20 evidence. Exhibit 1, the legal notice published in the New  
21 Mexico Register on February 13th, 2015, the required minimum of  
22 30 days advance notice for a public hearing.

23 Exhibit 2, the legal notice published in the  
24 Albuquerque Journal on February 22nd, 2015, required days of  
25 advance notice for a public rule hearing.



1                   Exhibit Number 3, the memorandum to interested  
2 parties dated February 13th, 2015.

3                   Exhibit Number 4, proposed amendments to the  
4 board's rule, part 1 of 16.39 NMAC entitled "General  
5 Provisions." The proposed changes within that section deal  
6 with changing the issuing agency's address, changing or  
7 redefining the duties of the board and officers, procedures at  
8 board meetings and committee meetings, and also redefining the  
9 procedures for rosters, licensure rosters.

10                  Exhibit 5, proposed amendments to the board's  
11 rule, part 2 of 16.39 NMAC entitled "Professional Development."  
12 Within these proposed changes are a definition for ethics  
13 training, redefining the requirements for ethics continuing  
14 education hours. Also cleaning up the requirements for renewal  
15 and the hours that are required. Changing Section G of record  
16 keeping. Also changing or updating language for the  
17 reinstatement section and a few other sections under the  
18 exemptions section of part 2.

19                  Exhibit 6, proposed amendments to the board's  
20 rule, part 3 of 16.39 NMAC entitled "Engineering Fees." In  
21 there we change and update the address for the issuing agency.  
22 Definitions are also updated to fit the current standards for  
23 engineering curriculum and also the computer-based testing  
24 system now given by NCES. Updating and adding disciplines of  
25 engineering. Removal of the fire protection section. Updating

1 licensure requirements for engineering. Implementing new  
2 language for the computer-based testing of NCES. Updating on  
3 Section 12, seal of license, the seals under responsible charge  
4 and also sealing multiple documents. Under Section 13,  
5 endorsements, updating that section with the more current laws.

6 Exhibit Number 7, proposed amendments to the  
7 board's rule, part 4 of 16.39 NMAC entitled "Incidental  
8 Practice." Again, updating the issuing agency's address, as  
9 well as increasing the construction value.

10 Exhibit Number 8, proposed amendments to the  
11 board's rule, part 5 of 16.39 NMAC entitled "Surveying."  
12 Updating the issuing agency's address. Updating the  
13 definitions also to coincide with computer-based testing and  
14 other educational requirements. Updating the section regarding  
15 licensure requirements. Updating the section "Examinations" to  
16 comply with the new NCES computer-based testing. Also, under  
17 seal of license dealing with the licensee and responsible  
18 charge in multiple projects, and adding in a new section on the  
19 history of endorsements of the licensure requirements  
20 throughout the years.

21 Exhibit Number 9, proposed amendments to the  
22 board's rule, part 6 of 16.39 NMAC entitled "Licensure for  
23 Military Service Member Spouses and Veterans." This is a new  
24 section added into the Administrative Code to comply with the  
25 recent state legislature law that deals with military service

1 members, spouses and veterans and their licensure, expediting  
2 licensure.

3 Exhibit Number 10, proposed amendments to the  
4 board's rule, part 7 of 16.39 NMAC entitled "Miscellaneous."  
5 Along with changing the address of the issuing agency, proposed  
6 changes are changing the word "misconduct" to "a violation" and  
7 also some other verbiage.

8 Exhibit number 11, proposed amendments to the  
9 board's rule, part 8 of 16.39 NMAC entitled "Code of  
10 Professional Conduct." In this section several changes were  
11 proposed to clean up and to clear up some interpretations of  
12 the professional conduct.

13 Exhibit Number 12, public comments on proposed  
14 amendments from Mr. Tom Rollag on 16.39.3.

15 Exhibit Number 13, public comments on proposed  
16 amendments from Mr. Jeremy Baker on Section 16.39.5.

17 Exhibit Number 14, public comments on proposed  
18 amendments from Mr. Gerald Donahue on Section 16.39.5.

19 Exhibit Number 15, public comments on proposed  
20 amendments from Mr. Glen Thurow on Section 16.39.5.

21 Exhibit Number 16, public comments on proposed  
22 amendments from Mr. Cliff Spirock on Section 16.39.6.

23 Exhibit Number 17, public comments on proposed  
24 amendments from Mr. Hank Rosoff on Section 16.39.8. And that  
25 is all the exhibits, Mr. Chair.

1                   CHAIRMAN BRASHER: Thank you. Mr. Valdez, are there  
2 any questions regarding the -- not at this time the details of  
3 the exhibits but the exhibits themselves from the board?  
4 Hearing none, Exhibits 1 through 17 are hereby admitted into  
5 the record.

6                   Mr. Valdez, are there any other exhibits that  
7 you'd like to enter into the record at this time?

8                   MR. VALDEZ: Are there any exhibits that need to be  
9 entered from the public at this time, any written exhibits?  
10 There are none.

11                  CHAIRMAN BRASHER: Thank you. Any persons wishing to  
12 testify and who wish to submit evidence with their comments  
13 shall do so when they are recognized to testify. Each document  
14 shall be introduced as an exhibit into the record. Board  
15 members will be permitted to ask questions before I rule on the  
16 admissibility of the evidence. Upon admissibility, each  
17 exhibit will be marked and numbered and entered into the  
18 record.

19                  At this time, each proposed rule will be  
20 introduced in turn into the record. I'll open the floor to  
21 members of the audience for testimony and comments on each  
22 rule. Members of the hearing board or of the audience may  
23 question each witness upon being recognized to speak. However,  
24 any discussion by the board will be held during the following  
25 meeting.

1                   So what I'd like to do now is, we have the list  
2 of exhibits, the 17 of them entered into the record. And I  
3 presume everybody's got copies of these. So let me ask, is  
4 there anyone who would like to comment on Exhibit 1, part 1,  
5 the general provisions.

6                   Hearing none, moving ahead, is there anyone who  
7 would like to comment on part 2, the professional development?

8                   MR. VALDEZ: Mr. Chair, members of the board, my name  
9 is Perry Valdez, and I'd like to make a comment on part 2,  
10 section -- my apologies. It's under Section 1.

11                  MR. BOHANNAN: Mr. Chair, I move that we go back to  
12 part 1.

13                  CHAIRMAN BRASHER: Let's go back to part 1, reopen  
14 that. What comments do you have under part 1, general  
15 provisions, Mr. Valdez?

16                  MR. VALDEZ: Under Section 17, status of licensure.  
17 For retired status of a license, on there I would recommend the  
18 board amend Section A under "Retired Status" to include if the  
19 license must be active. Right now as it stands, it leaves it  
20 open that anyone with a license that's either lapsed or  
21 inactive can apply for retired status. And I would recommend  
22 the board to amend that to include that the requirement be that  
23 the license has to be active and in good standing.

24                  CHAIRMAN BRASHER: If I understand this correctly,  
25 what you're suggesting, then, is that before someone can apply

1 for active or retired status -- inactive or retired status,  
2 they should be active.

3 MR. VALDEZ: Just retired.

4 CHAIRMAN BRASHER: Just retired. Okay. Sorry. So  
5 before somebody asks to put their license on retired status,  
6 they can be active to start with.

7 MR. VALDEZ: Correct.

8 CHAIRMAN BRASHER: In good standing, and so forth.

9 MR. BOHANNAN: Mr. Chair, if I may ask a question.

10 MR. BRASHER: Mr. Bohannon, please.

11 MR. BOHANNAN: Mr. Valdez, would you suggest a new  
12 section, Subsection 4, or would you suggest that we modify  
13 number 1 "retired from active practice" and put in a comma  
14 "provided that the licensee is in active state"?

15 MR. VALDEZ: Correct. I would input a new section  
16 number, so it could be A1 and an A2, at least 60 years of age,  
17 comma, number 3 license is currently active, semicolon, and  
18 number 4, "have been licensed for a continuous period of 20  
19 years," et cetera, et cetera.

20 CHAIRMAN BRASHER: Any comments on that from the  
21 board?

22 MR. TONANDER: May I ask a question?

23 MR. BRASHER: Mr. Tonander.

24 MR. TONANDER: Mr. Valdez, could you substantiate why  
25 someone could not go from inactive essentially to retired?

1 MR. VALDEZ: As it currently stands, the licensee may  
2 request retired status while they are in inactive status or in  
3 a lapsed status. It just seems that to retire a license when  
4 technically they don't have a license seems a little bit --  
5 what's the answer I'm looking for? Since they currently don't  
6 have an active license, it doesn't seem appropriate to retire a  
7 license that's not active, currently active.

8 MR. BOHANNAN: Mr. Chair, if I may. Mr. Valdez, so  
9 that would preclude someone who may have an inactive license  
10 who may be under disciplinary action by the board from actually  
11 retiring the license, in my opinion. Is that what you think?

12 MR. VALDEZ: I hadn't thought about that, but, yes,  
13 potentially.

14 CHAIRMAN BRASHER: This rule was not one of the rules  
15 that was a modification that was sent to us. But while we're  
16 here, does anybody have any comments? The idea is that before  
17 you can go to retired status, you need to be in active  
18 standing.

19 MR. VALDEZ: Correct. An active license.

20 CHAIRMAN BRASHER: Okay. Thank you.

21 MR. BOHANNAN: Mr. Chair, if I may ask our general  
22 counsel. So this is one of those amendments that in reviewing  
23 what we're allowed to do at this hearing and subsequent board  
24 action would probably need to be readvertised.

25 MR. WORD: That would be my recommendation, Mr. Chair

1 and Mr. Bohannon, since this was not among the proposed changes  
2 that were advertised. It's okay to discuss it, but I would  
3 recommend that the board not adopt this proposed change at this  
4 time in support of this rule making process.

5 MR. BOHANNAN: So this would actually be -- as we get  
6 comments from the general public from our licensees as well as  
7 the general board members, we're going to have a list of  
8 proposed rule changes that would have to actually go back to  
9 the process. So this would be one of those that would fall in  
10 that category.

11 CHAIRMAN BRASHER: But if we have those, we might as  
12 well bring them up. We might as well let them surface. This  
13 is a good forum for that.

14 MR. WORD: Just to be clear, my recommendation,  
15 Mr. Chair, that the board ultimately at its follow-up meeting  
16 will be deciding on proposed changes that have been published  
17 and we're specifically acting on our hearing today.

18 MR. BRASHER: Thank you for the reminder, Mr. Word.  
19 Regarding part 1, Mr. Valdez, does that constitute it?

20 MR. VALDEZ: Yes.

21 CHAIRMAN BRASHER: Let's go back to part 2, the  
22 professional development. Let me ask again, is there anyone  
23 who would like to comment on part 2, professional development?  
24 Okay.

25 MR. THUROW: Mr. Chairman, are we allowed to make a



1 comment from the board itself concerning this.

2 CHAIRMAN BRASHER: Yes.

3 MR. THUROW: I would like to point out on continuing  
4 professional development, which is 16.39.2.8(D), requirements,  
5 that the proposed language will probably be at odds with the  
6 NCEES language for continuing professional competency. The  
7 NCEES education committee has decided to put before the full  
8 board or the full NCEES conference a change in the basic CPC  
9 language which will say that it is 15 professional development  
10 hours per calendar year, one of which should be in ethics.

11 So while this has not yet been codified in the  
12 NCEES CPC standards, I suspect that it will be so this coming  
13 August at the annual conference. So I just want to point out  
14 at this time that our rule will be in conflict with the NCEES  
15 standard.

16 CHAIRMAN BRASHER: Mr. Thurow, you said that one of  
17 which -- is that one PDH of which --

18 MR. THUROW: Should be in ethics. And then also  
19 using this on a calendar year rather than a biennium. So,  
20 essentially, what they are trying to achieve, Mr. Chairman and  
21 members of the board, is to have a degree of continuity between  
22 states to enhance mobility for engineers. And so they're  
23 trying to set a standard for states to follow.

24 Now, this certainly doesn't obligate us in any  
25 stretch of the imagination to follow the standard. But I did

1 want to point out that they will require one hour of ethics,  
2 and our current language strikes the ethics requirement. I  
3 understand that this will be -- ethics can still be taken and  
4 counted towards continuing professional competency. But in  
5 order to facilitate, again, mobility, the mobility issue will  
6 require other states that continue to have an ethical  
7 requirement. Those practitioners should be aware that while it  
8 is optional in New Mexico should we go that route, it is still  
9 required in other states and as part of the national standard.

10 CHAIRMAN BRASHER: Thank you, Mr. Thurow. At this  
11 point, the time is 10:40 a.m. For the record, we are joined by  
12 Ms. Julie Samora, board member.

13 Mr. Thurow, the forthcoming NCEES recommendations  
14 and is it one PDH ethics required per --

15 MR. THUROW: Yes, per calendar year. So you would  
16 need two in a renewal cycle.

17 CHAIRMAN BRASHER: Okay.

18 MR. BOHANNAN: Mr. Chair, if I may.

19 CHAIRMAN BRASHER: Mr. Bohannon, please.

20 MR. BOHANNAN: I would like to hear the board's  
21 discussion on modifying the second line of that from striking  
22 all ethics hours from four required biennium to two, to have at  
23 least two hours in ethics with the thought process that after  
24 NCEES adopts it, then next year we could bring our rules into  
25 alignment and we would already have that requirement to be in

1 alignment. I like where NCEES is going with annual  
2 requirements, educational requirements. That's one of our  
3 biggest problems is getting people at the end of the year  
4 saying, "I forgot to get my PDH credits." And we spend a lot  
5 of time on this board talking to folks about who missed their  
6 requirements. So I would be supportive once NCEES amends that  
7 and adopts that procedure. As an interim step here, I would  
8 consider entertaining two PDHs in a two-year period. That's  
9 just my thoughts.

10 CHAIRMAN BRASHER: Mr. Thurow, what has NCEES  
11 recommended in the past before this?

12 MR. THUROW: The current CPC standards pretty much  
13 follows the way our current rules are written. Again, their  
14 emphasis, as Mr. Bohannon has mentioned, that they want to make  
15 it per calendar year rather than biennium because they find  
16 that a lot of people are waiting till the final hour and then  
17 jumping in to get 30 hours of credit. And they feel that if it  
18 were maintained on a calendar year, that it would be more  
19 appropriate to the continuing educational competency that  
20 they're looking for.

21 I believe that -- and of course, Dr. Idriss  
22 serves on that committee with me. And am I characterizing that  
23 correctly, Dr. Idriss?

24 MS. IDRIS: Yeah. It makes it looking at the  
25 mobility. And currently the rule is so different from state to

1 state and the dates are so different. So basically what they  
2 say is if you make it on a calendar year, then it makes it so  
3 much easier. For somebody who is licensed in multiple states  
4 it becomes really difficult to keep up.

5 MR. THUROW: Mr. Chairman, if I may continue with one  
6 other comment on this section.

7 CHAIRMAN BRASHER: If you would, please.

8 MR. THUROW: Under 16.39.2.8(D), there's going to be  
9 some language changes as per qualifying activities where we are  
10 adding new language under part 3 of -- Section 3 of part D  
11 where it states, "Short courses/tutorial and distance-education  
12 courses offered through correspondence, television, videotapes  
13 or the internet relevant to engineering and surveying." Their  
14 language will state "Completion of short courses/tutorial,  
15 webinar or distance-education courses offered for self-study,  
16 independent study or group study through synchronous or  
17 asynchronous delivery method such as live correspondence,  
18 archival or internet based education." So that is a minor --  
19 there's some words missing there, but they're trying to make it  
20 more in tune with the current way that PDHs are being required.  
21 So we're dropping "television" and just trying to update the  
22 language in that section to reflect the actual -- again, the  
23 actual way that continual professional competency hours are  
24 obtained by practitioners. It's a minor point, but if we're  
25 going to alter the language and want to, again, be in line with

1 NCEES, we might consider it now. Again, this has not been  
2 formally adopted at this point by NCEES, but I suspect that it  
3 will be placed on a consent agenda at the annual conference  
4 this coming August.

5 CHAIRMAN BRASHER: Okay. If you would step back just  
6 a second, Mr. Thurow. On the PDHs for ethics and obtain  
7 annually, how would that change the rules we have in front of  
8 us here?

9 .

10 MR. BOHANNAN: Mr. Chair, it would be two PDHs  
11 biannually.

12 MR. BRASHER: For ethics.

13 MR. BOHANNAN: For ethics.

14 MS. SAMORA: Mr. Chair, can I ask for clarification  
15 on that? So NCEES is looking at making PDH of ethics a  
16 requirement for one year? Is that something they're proposing?

17 MR. THUROW: Mr. Chairman, members of the board,  
18 Ms. Samora, I think what is contemplated here is trying to  
19 standardize CPC requirements amongst the several states to  
20 increase mobility. Most states which have some sort of an  
21 ethics education requirement in order to maintain a  
22 licensure --

23 MS. SAMORA: Is that a fact? Because my  
24 understanding is that they don't.

25 MR. THUROW: As I understand it -- I don't have the

1 precise number, but it is more often required than not. And so  
2 what they are wanting to do is change it from biennium or  
3 renewal cycle to calendar year of -- 15 hours per calendar year  
4 of total PDHs, one of which should be ethics. So you would  
5 need two -- for our current language it would take two hours  
6 of ethics.

7 MS. SAMORA: Because we've got the two years.

8 MR. THUROW: But the other thing is do we want to  
9 change it to 15 PDHs for calendar year rather than 30 PDHs per  
10 biennium.

11 MR. BOHANNAN: Mr. Chair, Mr. Thurow, I think -- if  
12 we make that change, I don't think we can make that change  
13 today. We would have to go back through the rule making  
14 process to advertise it. That's a big change to our licensures  
15 to go from the biennium to annual. But I am in agreement.  
16 I've actually changed the way I renew mine to an annual just  
17 so -- I'm tired of the same looking at is this the year I need  
18 to get my 30.

19 MR. THUROW: Mr. Chairman, members of the board, one  
20 comment -- and again, I believe Dr. Idriss has pointed this  
21 out -- is that with all of the states having different  
22 requirements trying to figure out when your renewal cycle is in  
23 relation to other states is problematic. So the emphasis here  
24 of if everyone moves to 15 per calendar year, that becomes less  
25 of an importance than it is currently.

1 MS. IDRIS: I think the reason probably why it's so  
2 different from state to state and even staggered in big states  
3 like California because they don't want too much pressure when  
4 it comes to the time of renewal on the staff, you know, when  
5 you have millions of people that have to renew at the beginning  
6 of the year. I think probably this is why they try to stagger  
7 it. So this is the reason. It looks like it's -- it's  
8 mind-boggling why you have to renew certain depending on when  
9 you started and on that date or when you were born or your  
10 birthday. But I think the origin was to lessen the load, a  
11 huge load on the staff. I think this is where it came from.

12 So, you know, the fact is that NCEES is trying to  
13 make mobility a lot easier for engineers that are licensed in  
14 multiple states. The truth of the matter is us as New Mexico  
15 State Board of Licensure, we don't have to abide exactly by  
16 what the committee is doing, especially when it has not been  
17 voted totally on still in the process. But what Mr. Thurow is  
18 saying is -- you know, he's giving us an idea about where the  
19 committee is going. And it hasn't even been voted on, but this  
20 is where the trend is. This is where the work of the committee  
21 is.

22 Now, certain states like, for example,  
23 California, they don't even have any CPC requirements, period,  
24 no CPC requirements. Some states require ethics, some states  
25 don't. So it still comes back to the state, what the State

1 Board of Licensure wants to do, keeping in mind that you want  
2 to facilitate mobility for our licenses.

3 CHAIRMAN BRASHER: Mr. Thurow, let me follow this  
4 through, then. The idea is that New Mexico would still require  
5 30 PDHs every two years. It's just that what we would require  
6 will take a 15-year time, right? But we wouldn't be asking the  
7 licensees to report that annually. It's just that we wouldn't  
8 know if somebody is getting all 30 in the last minute in two  
9 years. The only way this would be exposed would be through an  
10 audit, right? If somebody was audited and asked when did you  
11 get those 15 PDHs, and they say I got 30 December 31st, how  
12 would you know that somebody was getting all their 15 each  
13 year?

14 MR. THUROW: Mr. Chairman, members of the board, if I  
15 recall from our last renewal cycle that when we are entering  
16 our professional development hours in, that the date that they  
17 were taken is part of the fields that are being filled out. In  
18 line with that, NCEES is also contemplating a national CPC  
19 registry where people can report their professional competency  
20 development into this national registry, and that, again, is  
21 being formulated and is still -- the process is still quite  
22 dynamic.

23 But I believe that eventually what we'll find is  
24 that you have a national CPC registry that in the same token is  
25 when you have NCEES send their credentials to various state



1 boards of licensure much the same way that your CPCs will be  
2 recorded by NCEES to state boards of licensure where you are  
3 trying to obtain a license. And part of that entrance into the  
4 national CPC hour registry will be the dates that you took it,  
5 as well as some other pertinent facts related to that education  
6 that you acquired.

7 For our more parochial purposes, I believe that  
8 that field date is already in there. If not, it could be  
9 added, and we simply make it incumbent upon the licensee to  
10 enter in the appropriate dates that these courses were taken.  
11 It does not seem to be that big of a challenge to me. And  
12 then, of course, we rely on the veracity of our licensees to  
13 faithfully report their hours and when they took them.

14 MS. IDRIS: Mr. Chairman, I think the way we have it  
15 gives a lot more flexibility for the licensees. I mean, I know  
16 that it's important, mobility is important, but a lot of our  
17 licensees are only licensed in New Mexico. And if you start  
18 telling them, you know, you have to have those 15 within a year  
19 and we have to check on it and then you have to have your 30  
20 within the two years. Right now we have a lot more  
21 flexibility.

22 Let's say you find a course that you want to take  
23 at the end of the year or the following year, that two-year  
24 window gives you a lot more flexibility. I think what you want  
25 to do is really help people enhance their education. And

1 putting more and more failures and rules just simply makes it a  
2 lot harder to get licensed and to have to continue with your  
3 licensure.

4 I think right now we have a lot more mobility,  
5 much more flexibility than going to the NCEES standard.  
6 Because people want to get licensed in 10 states, well, they  
7 have to jump through the hoops. But somebody that wants to be  
8 license in one or two states, I think right now our rule is  
9 giving them a lot more flexibility. NCEES says you have to  
10 have two PDHs every two years -- or every year one PDH, and  
11 they keep track of it because they have the software and  
12 everything and the staff. But we are not telling them we're  
13 not going to take the PDHs from ethics. We are saying we're  
14 going to take up to four. But we're not saying you have to  
15 take this, this and that. We're giving them more flexibility.  
16 Depending on your profession.

17 You know, like for example, we are discussing at  
18 the NCEES meeting, you know, ethics it should be sometimes  
19 you're looking at business ethics. Sometimes you're looking at  
20 so many different facets of this topic. And when you start  
21 looking at so many rules and so many dates, it just makes it  
22 harder, you know what I mean? I myself like giving the  
23 licensees a little bit more flexibility. And we will take the  
24 NCEES rules and regulations once they vote on them, but it  
25 doesn't mean that this is the way to go. It doesn't mean this

1 is the way to go. That's how I look at it. You want to help  
2 the public. You want to help the licensees get licensed and  
3 get more and more of them licensed rather than making it lot  
4 harder on them to go through the process.

5 MR. BRASHER: Mr. Spirock.

6 MR. SPIROCK: Mr. Chair and members of the board, and  
7 an address to Mr. Bohannan's recommendation, for the purpose of  
8 this hearing I like the idea to changing it to two hours  
9 because we have that ability without reinventing the wheel and  
10 defer any action, definition of ethics nor the change of the  
11 mix of our reporting at this time.

12 MS. SAMORA: Mr. Chair, I would just like to maybe  
13 reiterate a little bit of what Dr. Idriss said. I'm all for  
14 trying to make things consistent with NCEES and the whole  
15 mobility issue. But I just think when the ethics came about, I  
16 think at the time it sounded like a great idea, and what it did  
17 was kind of create a situation where people were taking the  
18 same ethics class over and over again. Some people would argue  
19 that we're supposed to be ethical anyway. So I'm not against  
20 it. I mean, I could certainly say, you know, back off a little  
21 bit. But I personally would prefer to keep it the way that we  
22 proposed it, which is make it an optional up to the four hours.  
23 But if there's trend going toward that, I can understand making  
24 that requirement.

25 And I also reiterate what Dr. Idress said. You

1 know, let's not make it more complicated for people who report.  
2 You've got some states that don't have any PDHs. It's  
3 sacrilegious to say it, but some would say I'm an engineer. If  
4 I'm going to progress. I'm a surveyor and I'm going to  
5 progress in my career, I'm going to learn things on my own just  
6 to be robust in their fields. So we're requiring these PDHs  
7 and that's fine, but let's not make it more cumbersome.

8 I would be in favor with just keeping it the way  
9 we proposed it where we eliminate the requirement for PDHs for  
10 ethics. But I appreciate that NCEES is looking at that. I  
11 wasn't aware that -- I guess they're proposing that for their  
12 August meeting. I don't know. But anyway, just my two cents  
13 worth.

14 CHAIRMAN BRASHER: This was the thinking at the time  
15 these rules were revised and it goes back to probably two years  
16 or so. The thinking on the ethics was that you're ethical.  
17 You have ethics or you don't. You bring them to the profession  
18 or you don't. You're taking a class and I'm going to teach  
19 you. It might be a good reminder for you so I can teach you.  
20 It's not going to make an ethical person out of somebody who  
21 isn't, who doesn't already bring that to the profession. And  
22 that issues arising out of ethics through the complaint process  
23 would be brought to the board and be judged that way. And that  
24 was the reason that it was taken out and stricken from the  
25 rules at the time.

1                   And we also have heard from a lot of licensees  
2 who felt like they were taking the same class over and over  
3 again and weren't really getting a lot out of it. And we're  
4 agreeing that you have ethics or you don't; you behave properly  
5 or you don't. And your behavior is not going to be influenced  
6 by taking a class. Are there any other comments from the  
7 board?

8                   MR. COOPER: Mr. Chairman, members of the board, my  
9 opinion on the ethics is I always like the four hours. I agree  
10 with Ms. Samora's comments about you have ethics or you don't  
11 have ethics. That is true. But there are other things that  
12 you can bring to the table. Mr. Spirock sent me an E-mail with  
13 some excellent comments about what that would mean. I believe  
14 that if we're going to go in line with NCEES with the two  
15 hours, that we need to maybe put some definitions of scope of  
16 classes, types of things that the board would recognize as  
17 being covered under that ethics training, business practices,  
18 things like that. I appreciate Mr. Spirock's comments on that.  
19 That brought a lot of new thinking into my game here about  
20 ethics and stuff. That's all I have, Mr. Chairman.

21                   CHAIRMAN BRASHER: When you're considering whether to  
22 include ethics into the requirement or not is when we get to  
23 it -- and it's in part 8 here -- the Rules of Professional  
24 Conduct. I think that we've strengthened the rules. They're  
25 just a little more better defined, a little more clear on what

1 is expected in the way of professional conduct from engineers  
2 and surveyors. That was part of the thought process that went  
3 into it. So that's how we got where we are today. Any other  
4 comments from the board?

5 MR. TONANDER: Mr. Chairman and members of the board,  
6 I can certainly go with some of the later comments here as  
7 well. I believe there's a reason for ethics. I certainly can  
8 understand and appreciate the argument that you might be  
9 ethical or not. But I think I've mentioned this in a prior  
10 board meeting that people can intend to be ethical but simply  
11 not understand an element or two, and having a reminder of that  
12 on a regular basis may help things not come to this board,  
13 which really should be -- we should not necessarily be the  
14 people who are determining whether or not someone is being  
15 ethical in the state when they very well could have helped  
16 themselves and things. I think keeping those requirements in  
17 there would serve that purpose.

18 I would also somewhat question the idea that if  
19 we're really trying to allow flexibility, that then placing a  
20 limit upon the number of ethics credits seems contrary to that  
21 concept. If we're trying to define flexibility on how somebody  
22 obtains hours easier, I'm not sure what that limitation  
23 accomplishes.

24 CHAIRMAN BRASHER: Any other comments from the board?

25 MR. SPIROCK: Mr. Chair, before you go to the public,

1 just a quick story relating to the latest New Mexico  
2 professional surveyors conference. I was privileged to sit in  
3 with Mr. Tonander and Mr. Cooper on two sections that were  
4 entitled "Ethics." We didn't have any PowerPoints -- excuse  
5 me, yes, we did but we didn't use them. But we didn't go  
6 through any prescribed presentation. It was more of a panel  
7 that related to the audience. It's somewhat molded my approach  
8 to mandatory I've got to take ethics training. Before, it was  
9 okay, I'll go to the conference who is going to teach the same  
10 old stuff or is there a webinar or a pay per fee on the  
11 Internet.

12 By entertaining information from an audience in a  
13 panel session, a lot of the discussion went to professional  
14 conduct. It also went to the review of our minimum standards.  
15 So one of the reasons why I suggested that we defer this  
16 item -- and again, I'm supporting Mr. Bohannon's two-year  
17 requirement -- is to maybe rethink the entitlement or the name  
18 or the requirements for what's called ethics training, make it  
19 more expansive and make it more conclusionary of ethics, as  
20 well as review of our standard.

21 MS. IDRIS: Mr. Chairman, I like this idea because  
22 then we are opening it to a variety of courses, expanding the  
23 definition of ethics. There are so many ways of looking at  
24 ethics. So then you are opening it to many, many courses that  
25 will look at different parts of ethics, not the very narrow

1 definition of what the topic is. And then that would be very  
2 interesting for so many different parts of the profession.  
3 Now, that, I like. But then it becomes much more interesting  
4 and much more varied, yeah. So if you open up the definition  
5 of ethics, then you are looking at many, many aspects of it, a  
6 much more interesting list of courses.

7 CHAIRMAN BRASHER: Thank you. Any other comments  
8 from the board? If you would identify yourself for the sake of  
9 the record, that would be helpful.

10 MR. ROLLAG: I'm Tom Rollag. Mr. Chairman and  
11 members of the board, I have two comments. First of all, what  
12 I think is ethical, you may not.

13 CHAIRMAN BRASHER: Excuse me. Are you an engineer or  
14 are you a surveyor?

15 MR. ROLLAG: I'm a licensed surveyor in the state of  
16 New Mexico and in the state of Texas. To reiterate, what I  
17 think may be an ethical practice you may not; or what you think  
18 is ethical, I may not. And I've had a few occasions where I've  
19 doubted the ethics of my employers. But I do like the biennium  
20 if you want four hours. Most courses that you take are not  
21 one-hour courses in ethics. There may be a morning or four  
22 hours or something like that. That way if you get your  
23 four-hour PDHs in January, you can use them for the past year,  
24 the way I understand the rules. It's not two hours per year  
25 and two hours for the next year. It's four hours for the



1 two-year period. I think that makes it a lot easier,  
2 especially for people that are putting on seminars and whatnot.  
3 Thank you.

4 CHAIRMAN BRASHER: Thank you. Are there any other  
5 comments?

6 MR. MEDINA: Good morning. My name is Chris Medina.  
7 I'm a licensed surveyor in New Mexico. Mr. Chairman, members  
8 of the board, I'm in support of the reduced two hours if it's  
9 not going to be the four hours. I recognize the question  
10 either you're ethical or you're not. But the experience you  
11 get just interacting with the other professionals in the room,  
12 the person presenting the class gives you a whole new view on  
13 areas that you may have thought that you were doing right or  
14 going in the right direction. That's the intent to do the  
15 right thing, but it just exposes you to different opinions and  
16 gives it a different view from what you may have previously  
17 had.

18 I'm also liking Mr. Spirock's recommendation of  
19 opening it up, not boxing it down just to surveying and  
20 engineering. It's pretty diverse from business practices, the  
21 code of conduct just as an individual. So that's a great idea  
22 that I believe would make obtaining the ethics a little bit  
23 simpler. And then also open up the topics instead of just  
24 purely ethics geared towards surveying or engineering.

25 The last comment is the 15 hours per year. That

1 sounds -- in my opinion, it's a good idea compared to the 30  
2 hours per every two years. My approach on that is, you know,  
3 if somebody's lacking and they go all the way to the end to  
4 renew and then they're going to scramble to get those 30 hours,  
5 how does that protect the public? How is that individual  
6 continuing their education by cramming something in two weeks  
7 or two days, however long it takes.

8 So I think spreading it out gives that individual  
9 the opportunity to soak up what they're learning or continuing  
10 with the education instead of scrambling and, you know, maybe  
11 doing two seminars at once and it could come down to ethics  
12 again. You know, someone has two computers running on two  
13 different websites watching a video. I don't know. I think  
14 the 15 hours is a good way to go. Thank you.

15 CHAIRMAN BRASHER: Thank you. Are there any other  
16 comments on this? Let me ask, Mr. Thurow, is the NCEES talking  
17 about that 30 hours, the number 30?

18 MR. THUROW: Only in relationship to the total hours  
19 for most renewal biennium. But again, I want to emphasize that  
20 they are looking for 15 hours to be achieved in a calendar  
21 year, 30 hours for two calendar years for a renewal period.  
22 And again, that is simply to try to standardize from state to  
23 state for mobility.

24 It is not incumbent upon us in any shape or form  
25 as pointed out by Dr. Idriss that we have to adopt that mode

1 unless we wish to facilitate mobility of our licensees from  
2 state to state.

3 CHAIRMAN BRASHER: Are you aware of any states -- is  
4 anybody here aware of any states that require more than 30?

5 MR. THUROW: I'm not aware of any, Mr. Chairman.

6 CHAIRMAN BRASHER: Do they all require them, as far  
7 as you know?

8 MR. THUROW: No, not all states. California doesn't  
9 have any requirements because they know it all.

10 MS. SAMORA: Colorado doesn't have any, either.

11 CHAIRMAN BRASHER: All right. Thanks everybody for  
12 participating here. Let's discuss part 2. And we have the  
13 next part on our agenda engineering fees. This is part 3. Is  
14 there anybody from the board that would like to comment on part  
15 3? Hearing none, is there anybody visiting today who would  
16 like to comment on part 3?

17 Okay. Part 4 is incidental practice. Does any  
18 member of the board have any comments on the subject of  
19 incidental practice? Hearing none, any members joining us in  
20 our audience today want to comment on part 4? Hearing none,  
21 the next item is part 5 entitled "Surveying." Are there  
22 members of the board that would like to comment on our part 5?

23 MR. THUROW: Yes. Mr. Chairman, if I could, please,  
24 I would like to refer to Section 16.39.5.8(G). As originally  
25 published, if you go down about halfway for experienced

1 acceptable to the professional surveying committee, it states  
2 that the four years of experience for graduates of a four-year  
3 program in surveying must acquire this experience  
4 post-baccalaureate. This is not in line with the Engineering  
5 and Survey Practice Act and is in error. I have submitted as  
6 an item -- perhaps we'll discuss that later, but some  
7 alternative language which I believe reflects the intent of the  
8 Engineering and Survey Practice Act. Experience for -- if I  
9 could, when we talk about experience, we have two different  
10 levels. If you are a graduate from a board-approved four-year  
11 degree program in surveying, you may take the land surveyor --  
12 you can be considered for a land surveyor intern in your senior  
13 year. Then you can acquire four years experience either before  
14 or after your education to sit for the professional surveyors  
15 exam. So we do not want to suggest that it be  
16 post-baccalaureate because this experience can be obtained  
17 before you go to school.

18 For related science degrees acceptable or  
19 approved by the board, those applicants must have four years  
20 experience in order to take the land surveyor intern exam or  
21 the fundamentals of surveying exam. Then they must acquire  
22 four years of experience after that point to sit for a  
23 professional exam. So for board-accepted related science  
24 degrees, they need a total of eight years of experience. For  
25 graduates of board-approved surveying degree programs, they

1 only require four years of experience which can be obtained  
2 either before or after their education. The language I  
3 submitted as an exhibit adds clarification to that and is in  
4 keeping with the Engineering and Survey Practice Act.

5 CHAIRMAN BRASHER: Okay. So how would this language  
6 change, then, Mr. Thurow?

7 MR. THUROW: Well, in my exhibit I've actually  
8 altered the language. I can read you part C or paragraph --  
9 excuse me, paragraph G in its entirety if that will help the  
10 board. It's not that long.

11 CHAIRMAN BRASHER: It would help me.

12 MR. THUROW: All right. Let me read this, then, into  
13 the record.

14 CHAIRMAN BRASHER: This is your proposed language?

15 MR. THUROW: This is my proposed language. Paragraph  
16 G of 16.39.5.8, "Applicants for the professional surveying  
17 license will be accepted after the applicant has passed the  
18 professional surveying exam and has fulfilled the education and  
19 experience requirements. Successful passing of the  
20 professional surveying exam does not ensure licensure as a  
21 professional surveyor. To satisfy the statutory requirement  
22 for board-approved surveying experience prior to licensure, a  
23 candidate with a board-approved surveying curriculum of four  
24 years or more as determined by the board shall have four years  
25 of experience before or after certification as a surveying

1 intern. A candidate with a related science degree shall have  
2 four years of surveying experience acceptable to the  
3 professional surveying committee subsequent to certification as  
4 a surveying intern. After successfully completing the  
5 professional surveying examination, an applicant, if necessary,  
6 will meet the licensing requirements in the New Mexico  
7 Engineering and Survey Practice Act shall update the  
8 application as provided by subsection H of 61.39.5.8 NMAC."

9 So I'm trying to spell out specifically the  
10 difference between a board-approved surveying degree program, a  
11 graduate of that, and a board-approved related science degree  
12 and a graduate of that. I have also altered paragraph K to  
13 just go ahead and use the king's English and say exactly what I  
14 think the law is intending to say. K, as amended, would read,  
15 "All applications for professional surveyor license shall show  
16 proficiency in the English language and shall have a minimum of  
17 four years experience if a graduate of a board-approved  
18 four-year surveying curriculum, or eight years if a graduate of  
19 a board-approved related science curriculum working in the  
20 United States under the direction of a licensed professional  
21 surveyor who can attest to the applicant's ability and  
22 knowledge as a competent surveyor."

23 CHAIRMAN BRASHER: Okay. Is the distinction then  
24 when the experience is required?

25 MR. THUROW: The distinction is you need eight years

1 total experience for a board-approved related science degree,  
2 four of which has to be after you have passed the FS exam. If  
3 you are a graduate of a board-approved surveying curriculum,  
4 that four years of experience can be obtained before or after  
5 you obtain your degree.

6 So, for instance, I have John Q surveying student  
7 who worked in the industry for eight years and decided that he  
8 wishes to become a licensed surveyor and goes to school,  
9 graduates from a four-year degree surveying curriculum program  
10 acceptable by the board. He does not have to then go out and  
11 get four more years of experience. The eight years that he  
12 acquired prior to him going to school is sufficient to satisfy  
13 the requirement of the law.

14 Now, I have Bill Belahew. I don't know. Bill  
15 has a related science degree in geology which is accepted by  
16 the board. He needs four years before he can become a  
17 surveying intern. It's acceptable by the board, but he needs  
18 four years of experience before he becomes an LSI. Then after  
19 he becomes an LSI, he needs four more years in order to sit for  
20 the professional practices exam. So for one it's a total of  
21 four years experience. For the other it's a total of eight  
22 years experience. And for the fellow that needs four years, he  
23 can obtain that before or after his education. The four years  
24 for a related science must be obtained after certification as a  
25 land surveyor intern.

1           CHAIRMAN BRASHER: Okay. What if the individual  
2 obtains a degree in surveying, a bachelor's degree in surveying  
3 from, say, New Mexico State, and maybe the senior year right  
4 upon graduation that individual is eligible to take the LSI  
5 exam, pass it, become an LSI and then follow up with four years  
6 to become eligible to take the PS exam?

7           MR. THUROW: That four years could be obtained prior  
8 to obtaining his LSI.

9           CHAIRMAN BRASHER: Okay. So he has four years  
10 experience doing surveying in some responsible capacity. Then  
11 he gets a degree in surveying and he's eligible for the LSI.  
12 Then he's got another four years to take the -- so where is the  
13 LSI -- why is there an LSI step, then, if he gets the degree in  
14 four years? Does he move right to PS?

15          MR. THUROW: If his experience is acceptable to the  
16 board, he could go from LS to PS. Of course, they are two  
17 different exams testing two different -- the fundamentals of  
18 surveying exam is essentially a knowledge based exam. The  
19 principles and practices exam is a combination of both  
20 knowledge and experience.

21                   So you see, the thought process is here. And the  
22 way this has been interpreted in the past by the surveying  
23 committee is that your experience, as long as it's progressive  
24 and under the guidance of a licensed professional surveyor, can  
25 be obtained before or after your educational requirement is



1 satisfied for those in a four-year surveying curriculum. If  
2 you are simply -- again, the other side of this coin is that if  
3 you are in a program that is a related science degree, let's  
4 say it's forestry, your LSI requirement is four years of  
5 experience prior to becoming an LSI, and that's actually  
6 codified in the Engineering and Survey Practice Act. So we  
7 cannot alter that nor would I think we'd wish to.

8 But again, we are emphasizing here that the  
9 four-year surveying curriculum essentially offers you a direct  
10 path to licensure, where a related science degree will lead to  
11 licensure but not as a direct path. You need more experience.

12 MS. IDRIS: Mr. Chair, I wanted to ask Mr. Thurow a  
13 couple of questions. So, basically, what you're looking at in  
14 your amendment is two issues, right? To clarify the difference  
15 and experience requirement between a related science which is  
16 accepted for surveyors and when you are coming from an  
17 accredited or board-approved board. So eight years versus  
18 four. So that's one issue.

19 And the other issue is you want experience  
20 pregraduation to count for towards your licensure which right  
21 now is not accepted, right?

22 MR. THUROW: No. Right now I believe that the  
23 insertion of post-baccalaureate into the contemplated rules is  
24 a flat-out blunder.

25 MS. IDRIS: What is the current status right now?

1 MS. SAMORA: It was a mistake.

2 MR. THUROW: We like to say blunders, because  
3 mistakes are different than blunder. Now, if I could please,  
4 Mr. Chairman, members of the board, I would like to read from  
5 the Engineering and Survey Practice Act 6123-27.3, specifically  
6 E. "If otherwise qualified, a graduate of a board-approved but  
7 related curriculum of at least four years to be considered for  
8 a certification as a surveying intern shall have a specific  
9 record of four years of combined office and field  
10 board-approved surveying experience obtained under the  
11 direction of a licensed professional surveyor. Class time will  
12 not be counted in the four years of required experience, but  
13 work prior to or while attending school may be counted for four  
14 years of experience at the discretion of the board." Am I  
15 reading on the right -- I'm reading the wrong part of that.  
16 I'm sorry.

17 MS. SAMORA: That's a blunder.

18 MR. THUROW: That's a blunder. Give me a moment,  
19 Mr. Chairman. I want to reacquaint myself with what I thought  
20 was a memorized section of the Engineering and Survey Practice  
21 Act.

22 MR. BOHANNAN: Mr. Chair, if I may ask --

23 MR. THUROW: I'm sorry, Mr. Bohannan. I should be  
24 reading from it 61.

25 CHAIRMAN BRASHER: Which paragraph?

1 MR. THUROW: Number 5. "If graduated from a  
2 board-approved four-year related science curriculum  
3 specifically defined by the board rules, has a minimum of four  
4 years of board-approved experience subsequent to certification  
5 as a surveying intern," okay? So the Engineering and Survey  
6 Practice Act specifies that they must obtain this  
7 post-baccalaureate, but that does not apply to the graduate of  
8 a surveying curriculum, which is what I was reading in error to  
9 begin with.

10 So this is not a new distinction. This is the  
11 way that we have interpreted this section of the act for quite  
12 sometime, at least all of my long two years on the board. And  
13 I believe that what was proposed in the rule as being  
14 post-baccalaureate when referring to graduates of surveying  
15 curriculum four-year degree programs was placed there in error  
16 and should simply be stricken and the new language inserted as  
17 suggested in order to succinctly clarify this issue in the mind  
18 of our licensees and potential licensees.

19 MS. IDRIS: So, basically, Mr. Thurow, what you're  
20 doing is keeping it the same requirement for related and  
21 board-approved program post- and pre-baccalaureate, right?  
22 You're keeping it the same, but you are adding an additional  
23 four years for related.

24 MR. THUROW: I'm not adding it. That's been there.  
25 That's in the law.

1 MS. IDRIS: It's required eight years?

2 MR. THUROW: Yeah. Because to become a land  
3 surveying intern if you are a graduate from a related science  
4 degree, you need four years of experience before you can become  
5 an LSI. So once I become an LSI, I still need four years of  
6 experience to sit for the PS exam. I mean, I would like to  
7 call upon the other surveyors that are sitting around me to  
8 either substantiate or point out the error in my  
9 interpretation.

10 MR. BOHANNAN: So the intent is if you're in a  
11 surveying curriculum and you're surveying for somebody while  
12 you're going through school, it's really encouraging that  
13 education work portion. And in contrast, is if you're coming  
14 in without any experience at all, you want to make sure that  
15 those candidates have the experience as well as the education  
16 before they become licensed. But it also -- does this prevent  
17 someone who has got a four-year degree in related science, they  
18 are working while they're going through that for a licensed  
19 surveyor, would you count that as their curriculum or meeting  
20 their requirements?

21 MR. THUROW: No, because what the law specifically  
22 states is that the experience is obtained subsequent. And  
23 that's the important word here and the one that I was looking  
24 for earlier. Again, reading this from 6123-27.4 A5, "If  
25 graduated from a board-approved four-year related science

1 curriculum as specifically defined by board rules, has a  
2 minimum of four years of board-approved experience subsequent  
3 to certification as an intern." So you've got to become an  
4 intern first. And then after you become an intern, you still  
5 need four more years of experience subsequent to an intern.  
6 Now, how do you become an intern? That would be the next  
7 logical question. But certification of a surveying -- let me  
8 find that specifically here.

9 MR. BOHANNAN: I think that's actually my question is  
10 how do you become an intern?

11 MR. THURLOW: Well, you've got to be of good moral  
12 character. "Has obtained at least senior status in a  
13 board-approved curriculum in surveying." So I don't have to have  
14 any experience. I just have to go to a surveying curriculum  
15 program. In my senior year the school is probably going to  
16 make me take the fundamentals of surveying exam. And I believe  
17 that's part of their exit of competencies. "Has three  
18 references. After acceptance of the application, the applicant  
19 shall be allowed to take the program examination for  
20 certification as a surveying intern. Upon successfully  
21 completing the examination and approved four-year surveying  
22 curriculum, then by action of the board the applicant may be  
23 certified as a surveying intern."

24 Now, part D, "The certification of a surveying  
25 intern does not permit you have to practice surveying. It's

1 simply intended to demonstrate that the intern has obtained  
2 certain skills in surveying fundamentals and is pursuing a  
3 career in surveying."

4 E, "If otherwise qualified, a graduate of a  
5 board-approved but related curriculum of at least four years to  
6 be considered for certification as a surveying intern shall  
7 have a specific record of four years of combined office and  
8 field board-approved surveying experience obtained under the  
9 direction of a licensed professional surveyor." Okay. So you  
10 need -- related science you need four years of experience to  
11 even sit for the intern exam, okay? Once you become an intern,  
12 you pass the fundamentals of surveying, you still need four  
13 more years of progressive experience under the tutelage of a  
14 licensed professional surveyor for a total of eight years  
15 experience, four to become an intern, four more to take the  
16 professional surveyors exam. This is always how we've  
17 interpreted this. What changed was the way it was codified in  
18 the proposed rules, and I'm suggesting that that was in error.

19 MS. SAMORA: Mr. Chair and members, I think we've  
20 kind of fleshed all this out already. A blunder was just made,  
21 and so we just had the wrong language in there. I believe  
22 that's all.

23 MR. THUROW: That is correct.

24 MR. SPIROCK: Mr. Chairman, members of the board, in  
25 lieu of further testimony in Exhibit Number 15, I've look at

1 Mr. Thurow's proposed changes to the amendment and I totally  
2 concur with it.

3 MR. BOHANNAN: Could I ask our counsel to look at  
4 those proposed amendments to see if they're subsequent enough  
5 that they could be adopted at our board meeting today or we'd  
6 have to --

7 MR. WORD: Mr. Chairman, members of the board, I  
8 think these are consistent with the proposed rule and could be  
9 accepted if the board chooses to pursuant to this notice as  
10 part of this rule making process.

11 CHAIRMAN BRASHER: Before we leave this, let me ask a  
12 question, Mr. Thurow. Is there any situation under which an  
13 applicant would not have to take the LSI, could just go through  
14 a combination of education and experience, just go right to the  
15 PS exam?

16 MR. THUROW: Mr. Chairman, members of the board, I do  
17 not believe that is possible. We are required, I believe, by  
18 the Engineering and Survey Practice Act to take this multiple  
19 steps. LSI, again, primarily because it is two separate and  
20 the distinct exams. The fundamentals of surveying is quite  
21 different from the professional practices exam.

22 CHAIRMAN BRASHER: There's no such thing as a waiver,  
23 then, for the LSI?

24 MR. THUROW: No, sir.

25 CHAIRMAN BRASHER: Okay. On the subject, any members

1 joining us today like to comment on this?

2 MR. BAKER: Jeremy Baker. I'm a PE and currently  
3 working on my PS. And this rule would affect myself and  
4 several others that are in the surveying program right now at  
5 NMSU that are currently employed in the surveying profession  
6 gaining valuable real-world experience. My position isn't  
7 going to change after I graduate where I work at. Surveying  
8 companies are generally pretty small. I'm still going to be  
9 doing the same thing after I graduate. As I am now, it's  
10 not -- the four years prior to like Mr. Thurow was saying  
11 before, that's how the board had always interpreted. While  
12 you're working you go to school, you gain experience. When  
13 you're done after passing the fundamentals of the surveying  
14 exam, then you can apply for your PS. And if the board -- they  
15 still have the discretion. If the board finds your experience  
16 to be acceptable to them, then you can. If you are only doing  
17 construction surveying, you're not going to be allowed to take  
18 the PS and become a professional surveyor because there are  
19 rules that you have to have three years in boundary surveying  
20 specifically. And so they still have the discretion to accept  
21 your experience or not accept your experience, so there still  
22 is another check besides this. But from my understanding it's  
23 always been interpreted that year experience prior to  
24 graduation, you would be able to get your PS.

25 CHAIRMAN BRASHER: Incidentally, engineering would be



1 a related science degree.

2 MR. BAKER: May I say something on that, too? It's a  
3 related degree; however, the related degree also has  
4 stipulations on it. You have to have a minimum of 18 credit  
5 hours in surveying, which would be an equivalent of a minor in  
6 surveying. And there are also stipulations on which classes  
7 that the board wants you to take as an advisory opinion. Also  
8 in these rules changes, it's going to take that advisory  
9 opinion and put them into these rules changes that we're  
10 talking about today.

11 CHAIRMAN BRASHER: Thank you.

12 MR. THUROW: In response to your question,  
13 Mr. Chairman, yes, engineering is a related science degree. I  
14 would qualify that, though, personally by saying civil  
15 engineering is a related science degree, aeronautical  
16 engineering is not. And that is only my personal view.

17 CHAIRMAN BRASHER: Are there any other comments?

18 MR. MEDINA: I just have a question. Are we  
19 continuing on the same section of the 16.39.5 or are you guys  
20 going to jump to the next one on the agenda? Because I do have  
21 questions on further items of paragraphs.

22 CHAIRMAN BRASHER: What we're going to take up is we  
23 have been discussing part 5, the surveying. And our next item  
24 is the licensure for military service members. It's an  
25 amendment to the rules. Do you have more comments on part 5?

1 MR. MEDINA: Members of the board, on item  
2 16.39.5.10, the practice of surveying, I have a couple of  
3 comments. And I guess I'd like to introduce this as an  
4 exhibit. I missed the first part where you were asking for  
5 additional exhibits. I was wondering if I could offer this.

6 CHAIRMAN BRASHER: We'll take it.

7 MR. MEDINA: I'd like to introduce a modification to  
8 paragraph A and paragraph B.

9 CHAIRMAN BRASHER: Of 16.39.5.10?

10 MR. MEDINA: Yes, sir. Currently, the paragraph  
11 reads, "A person or any organization shall not advertise or  
12 offer to practice surveying work or accept such work unless the  
13 person or member of the organization is licensed by the board  
14 and is legally able to bind that organization by contract."  
15 I'd like to further add a statement stating after that  
16 sentence, "person and organization must register with the board  
17 and provide an affidavit stating said person is able to bind  
18 said organization by contract, and that person has the sole  
19 discretion on all survey matters." And the reasoning behind  
20 this is we're seeing companies offering services that don't  
21 have a licensed professional on staff and they're coming in at  
22 the tail end and either bringing them on as an employee, but  
23 they're not able to bind the company or the company is doing  
24 all the direction, overseeing of the site, and the individual  
25 is coming in and, say, rubber stamping or just not reviewing it

1 and just stamping it and taking whatever their payment is. So  
2 I'd like to see something that kind of has a little bit more  
3 definition than that.

4           Second, I'd like to add a paragraph B or replace  
5 paragraph B or maybe B.1 and add "A person licensed by the  
6 board shall only represent a single organization as the  
7 licensed surveyor in responsible charge and themselves as an  
8 individual entity." I was trying to work the wording on that.  
9 But the same thing. There's situations that I've come across  
10 where companies are offering professional services, and an  
11 individual -- I'm a surveyor, so individual surveyors coming in  
12 and representing five or six companies, providing the stamp.  
13 The company is providing the crew, the equipment, directing the  
14 work, and then an individual is coming in after it's licensed  
15 and stamping it. And there's organizations or companies that  
16 don't employ the proper professionals on the staff and they're  
17 kind of skirting around the loft, in my opinion. And I'd like  
18 to see something done to police the profession. The companies  
19 are coming in and, you know, I'm asking the question, "Is your  
20 licensed surveyor an employee? Yes, he or she is an employee.  
21 Are they able to bind the company? No, they're not." And then  
22 explain to them the practice act, and then lo and behold a  
23 document is created saying so-and-so is now an officer or able  
24 to bind the company. So I'm looking at ways that the board or  
25 the rules could help out in eliminating this type of practice.

1 That being said, that's my questions or comments.

2 MR. SPIROCK: In reviewing Mr. Medina's comments from  
3 the floor and going through my own experience, I would endorse  
4 trying to incorporate those concepts subject to further  
5 awardsmanship. In the state of Arizona, there's not a problem  
6 with registering me as an engineer. But I still annually  
7 register me as the responsible person for surveying services of  
8 the state of Arizona. It's not a hard thing to do and might  
9 involve some additional staff work, but it sure cuts to the  
10 quick about who's in responsible charge of doing the work. So  
11 I would endorse Mr. Medina's comments.

12 MR. BOHANNAN: I think we have skirted around this  
13 issue. We've actually seen this in other states. In other  
14 states you actually have a firm registration as part of their  
15 requirements, and we don't have that under our rules. And it's  
16 something that we've talked about for my two years as well on  
17 the board that I think needs to be entertained. I think it can  
18 go a long way. I think there's a lot of discussion as far as  
19 multiple licenses and multiple companies.

20 I can think of a couple of individuals that I did  
21 work with that actually have several companies and they operate  
22 within the guidelines. What you've described sounds like you  
23 need to talk to staff and maybe have them do some  
24 investigation. It sounds like there's some violations of the  
25 act going on currently. So I think this is one of those areas

1 that I think we need to probably put on our next rule change  
2 area for further discussions, but I would also support the  
3 registration of companies. Texas does it, Colorado does it. A  
4 few other states do it as well.

5 MR. SPIROCK: To clarify, Ron, you mean the  
6 registration of individuals within companies that are in  
7 responsible charge for hearing provisions for service and  
8 saying they are the responsible register.

9 MR. BOHANNAN: Yes. And it's very complex. And so,  
10 yes, I agree with that clarification, but it is very complex.  
11 But it goes back -- Oklahoma is a real good example. And we've  
12 seen a lot of violations that have come out of Oklahoma where  
13 the individual is licensed in Oklahoma but his company is not  
14 licensed in Oklahoma. It's a violation of their act and their  
15 rules. So that's one of the things that I'd like to see here  
16 too because we've actually had a couple of cases where the  
17 firm, we thought, was practicing engineering but was not  
18 licensed as an engineering firm, was using a lot of  
19 subcontractors, and it gets into a very complex situation. But  
20 I think it's worthy of this board to take the time and effort  
21 to move that forward.

22 CHAIRMAN BRASHER: I agree with Mr. Bohannan.  
23 Mr. Medina, if you've got some specific instances of specific  
24 companies and individuals licensed or otherwise, let me suggest  
25 you take it to the board office, Mr. Valdez specifically, and

1 see if there's a basis for a complaint there. But I think I  
2 understand exactly what you're talking about. And we'll take  
3 this up in the future, this idea of maybe the language could  
4 use some clarification here to decide or maybe the rules could  
5 be a little more clearer or forceful about who can be  
6 considered as being able to contractually obligate a company.  
7 Over the past year or so, I've had discussions over specific  
8 instances like that. As an engineer I've had experience with  
9 using surveyors who it seems as though they're representing  
10 several different companies at the same time, and it sort of  
11 begs the question of how they can actually be doing this and  
12 can they really contractually obligate.

13 Some of the discussion that will come out of this  
14 will probably be along the lines of a surveyor being a  
15 subconsultant to, say, an engineer or an architect who enters  
16 into an agreement with his client that he can contractually  
17 obligate the company for the purposes of that particular  
18 project, as opposed to -- Mr. Spirock.

19 MR. SPIROCK: Mr. Chairman, I'm smiling because I  
20 mentioned that you were at the ethics round table and that was  
21 your presentation. I had been in Miami representing a client  
22 who was with the Corps of Engineering and surveying. And I'm  
23 not an engineer, so I stopped that negotiation and called my  
24 engineer to fly to Miami. It was an interesting topic.

25 But my comment right now is are there any

1 provisions of Mr. Medina's intent that could be included for  
2 our consideration for this rule if you choose, defer the nature  
3 of the topic or defer registration to a later date?

4 CHAIRMAN BRASHER: Well, I think that subject to the  
5 opinion of our counsel, Mr. Word, it seems to me that we can't  
6 insert language into our rules right now.

7 MR. WORD: Mr. Chair, if I may, members, I don't mean  
8 it as a blanket statement, but I'm hearing Mr. Medina's  
9 suggestion. And again, I haven't had a chance to read your  
10 proposed language, but I heard you talk about a requirement  
11 that the parties submit an affidavit substantiating this, and I  
12 think that's an affirmative obligation that goes quite a bit  
13 farther than what's in the proposed change that's been noticed  
14 in this hearing.

15 CHAIRMAN BRASHER: The point being it's not that --  
16 the words he offers, if you took them all at face value,  
17 procedurally we can't insert them into this right now. But the  
18 subject is -- but the issues he surfaced here, we will  
19 incorporate it into our forthcoming discussions on the rules.

20 MR. WORD: If a proposed change differs substantially  
21 from the proposed rule change that's been noticed, there is a  
22 question of whether or not the board should do it in this  
23 hearing. It's not black and white in the law, but my advice  
24 would be and always would be conservative on these matters.  
25 I'm submitting that I hear this as a pretty significant

1 affirmative requirement, the requirement that a party submit an  
2 affidavit. And I would just caution the board to consider --

3 CHAIRMAN BRASHER: He's not commenting on specific  
4 wording of any specific rule change itself. I think he's  
5 suggesting an additional change.

6 MR. MEDINA: It's kind of open for discussion. The  
7 wording on both items is -- I know I'm pushing the limits of  
8 interpretation. The big thing I'm trying to get at is how do  
9 certain things protect the public. And item B, with an  
10 individual offering or purporting to be an employee of several  
11 companies and stamping these documents, how is that protecting  
12 the public. It's opening up to errors. If he or she is not  
13 overseeing, directing, supervising the type of work that's  
14 being done and the approach, at some point something bad is  
15 going to happen where it's going to involve dragging in a small  
16 landowner or somebody that doesn't have any money into a  
17 lawsuit or who knows what. But it doesn't help the public at  
18 all by rubber stamping these surveys. And I'm coming from a  
19 survey point of view. I don't know on the engineering how  
20 there's that type of same situation. This is my area, what I'm  
21 exposed to. But I will turn this over.

22 CHAIRMAN BRASHER: Give that to Mr. Valdez.

23 MR. COOPER: Mr. Chair, members of the board, one of  
24 the things about this practice of surveying -- I really feel  
25 that we need to defer this and give it some real workover. The



1 thing that I have seen is companies obtaining contracts and  
2 then going out and getting a low bid on a survey and  
3 engineering. I'm sure some of you board members here are  
4 familiar with a cell phone tower issue in the past. Mr. Word  
5 is shaking his head right there. That's a very thorny issue.  
6 I'm familiar with a couple of companies that were doing that  
7 because they called me personally looking for a low bid on the  
8 surveying services. They had the contract and now they needed  
9 somebody to do the survey, and I absolutely refused to do that.

10 So that is a big issue. Not so much on the  
11 rubber stamping. I think we got most of those guys out of  
12 here. There are still a few of them around, but -- I mean from  
13 a surveying standpoint. A few of them have passed away that I  
14 know. A few of them went out of business and retired. And  
15 this section here also practices surveying and I believe is in  
16 the practice of engineering, is it not, Mr. Bohannan? And I  
17 think that's something in the portion of the act should also be  
18 added. I firmly believe we need to do as Mr. Medina has  
19 suggested, do some new language on this. Thank you.

20 CHAIRMAN BRASHER: Any other comments or questions of  
21 Mr. Medina?

22 MR. MEDINA: Thank you.

23 CHAIRMAN BRASHER: Thank you very much.

24 MR. VALDEZ: Just a quick comment regarding  
25 Mr. Medina's proposal. Based on my history with the board,

1 this issue has come up quite a bit -- these issues have come up  
2 quite a bit on the surveying side with companies hiring one  
3 surveyor for different companies, things like that, more so  
4 than the engineering discipline. So it is an issue that needs  
5 to be addressed and has been discussed by the board. So I  
6 would recommend that the board take it under consideration.

7 CHAIRMAN BRASHER: Thank you. I agree.

8 MR. COOPER: Mr. Chairman, board members, I have  
9 specific knowledge of the failure of this. A company was  
10 hired, received a government contract to save the Canyoncito  
11 National Park north of Santa Fe. They obtained a surveyor who  
12 I know personally, did the survey. And as much as I can glean  
13 from it, the company that hired him was running the show and  
14 the surveyor prepared a product that was not in conformance  
15 with the requirements. It took five -- four years to get  
16 him -- he was paid, everything was taken care of. But it took  
17 four years for the government to finally decide to abandon that  
18 company and go with a new surveyor to fix the problems in that  
19 whole procedure. How do I know? Because I'm the one that got  
20 hired to fix it.

21 So my client was harmed with four years of delays  
22 because of this situation. This is going on 14 years now and  
23 he was harmed for almost four years by this type of practice, a  
24 company getting a contract, hiring a surveyor to go out and do  
25 it, collecting their cut and paying what I believe was a very

1 minimal amount to the surveyor, in my opinion, because he told  
2 me how much he got paid. So that's all I have.

3 MR. BAKER: Mr. Chair, Mr. Cooper, I appreciate your  
4 comments. I'm going to have to disagree with you a little bit  
5 on the comment that you said that is kind of going by the  
6 wayside because of a lot of the guys that are rubber stamping.  
7 I'm more like Mr. Medina. I've seen it quite a bit recently.  
8 Southeastern New Mexico has been busy, can't get enough people  
9 there. "I'll stamp for your company, no big deal. You're an  
10 engineering company. You provide engineering and surveying  
11 services. You don't have a surveyor, I'll stamp for it." I  
12 think it is a big issue. We do have some examples that could  
13 be modeled off of. One, RLD which has the contractor's  
14 licenses under them. They have rules in place. The contractor  
15 is -- the license of that contractor is bound to a company.

16 Mr. Bohannan, you had said earlier that some  
17 people have multiple companies that they represent. That's  
18 true. The contractors can do it as well, as long as they're an  
19 owner of the company. So I don't anticipate that that would be  
20 a problem. But I think that we do need to have a firm  
21 registration just because of these issues that we see. I don't  
22 see it as much on the engineering side as I do on the surveying  
23 side. But I mean, like Oklahoma has a firm registration.  
24 Texas has a firm registration. And I think that we really need  
25 to look at getting New Mexico on board with that as well.

1 Because I do see one individual representing several different  
2 companies or one company being represented by several different  
3 companies. So I'm company A. Well, if I need a survey, I'm  
4 offering surveying services and maybe surveyor B that has a  
5 company over here will take care of it if it's in this area, or  
6 surveyor C if it's in this area will stamp it.

7 CHAIRMAN BRASHER: How do you see firm registration  
8 as addressing that? Is the idea that firm registration  
9 would -- they have not registered unless they have somebody who  
10 had dedicated just to that company?

11 MR. BAKER: Because your license is bound to your  
12 company. You can't stamp for another company. You can only  
13 sign and stamp and seal documents for your company or whatever  
14 company you're working for. And individuals, also. I can  
15 stamp for -- let's say for Pedigree; that's who I work for. I  
16 can stamp engineering documents for them currently. Or if I  
17 have something that I've disclosed -- and that's a requirement,  
18 too -- I have to disclose to them if I'm working on a project  
19 outside of that and get approval. I can stamp for myself as  
20 well. But I can't stamp for Mr. Cooper's company or anyone  
21 else's.

22 So I think that's how you nail it down is you  
23 can't stamp for that company. Then if they are stamping for  
24 it, then it's easier to turn it in to the board and say this is  
25 the relation, guys. Because right now it's almost impossible

1 to have a violation. You can have one person stamping for five  
2 companies, and they're not in direct charge of those employees.  
3 They can't be if they're not in charge of the employee.

4 CHAIRMAN BRASHER: Okay. Mr. Spirock.

5 MR. SPIROCK: Mr. Chairman, a question as a member of  
6 your board. I'm totally naive about the process of dealing  
7 with all of the regulations regarding review of these words by  
8 the archival and records department, publication in the  
9 newspapers and whatever media. I thought that the intent of  
10 these rules hearing was to listen to testimony and then provide  
11 for another date in the future to consider those. It could  
12 even be this afternoon. And then perhaps as a board vote on  
13 the acceptance of or the nonacceptance with your concurrence  
14 for proceeding to revisions to those words that address the  
15 very testimony we just heard. But the idea of saying, oh, stop  
16 it if it is a major conflict we have to re-advertise. Or if  
17 it's minor, it's like Mr. Thurow's recommendation were hardly  
18 accepted as being minor and a good clarification, we could act  
19 on them this afternoon. So I have the question: How do we  
20 incorporate Mr. Medina's comments, the comments from the  
21 public, deliberate about them, suggest the words that ought to  
22 be acted upon and proceed forward?

23 MR. WORD: Mr. Chairman, members of the board,  
24 Mr. Spirock, I'm happy to talk to you during a break and  
25 explain a little bit more of the process. I don't want to take

1 up the time of the hearing. But the hearing process is  
2 governed by the Open Meetings Act and the Uniform Licensing  
3 Act, and the basic notion is there has to be proper notice.  
4 And the notice given of this hearing was that the board was  
5 considering changes to part 5, including there are changes  
6 proposed to 16.39.5.10(A), in that Mr. Medina, as I understood  
7 it -- again, I haven't had a chance to read his proposal -- was  
8 to add a sentence, which, as I interpreted what he read to us,  
9 is a pretty significant substantial -- pretty significant  
10 affirmative obligation on the part of the parties to submit an  
11 affidavit. And right now the only proposal is to add words or  
12 accept such work to the currently, which in 16.39.5.10(A) And  
13 I think the proposal arguably goes far enough beyond that it  
14 would require the board to consider taking that up at its  
15 subsequent rule hearing.

16 Mr. Thurow's proposed changes were to the  
17 language that is in the proposal, the new language that's  
18 proposed in that part. And he was tweaking that language,  
19 basically. This is new language that was not part of the  
20 proposed changes that the public was notified of and that the  
21 board is considering today. Sorry if I'm not making that  
22 distinction clear.

23 MR. SPIROCK: You've made that distinction clear even  
24 though you're not general counsel. I understand the  
25 definition. This stuff has been going on since 2012 at my

1 first meeting in December where there were words. The words  
2 have been hammered out since 2012. Be a good boy. Wait for  
3 the rules here. I've waited for Mr. Valdez to disseminate the  
4 corrected words that were discussed prior to December of 2012,  
5 which took until March. I have told people in good faith at a  
6 public seminar with NMPS that you'll get your chance of  
7 submitting words and hear how this process goes. And I'm  
8 suggesting since we have a meeting scheduled in April and again  
9 in June and probably again in August that items of import under  
10 these rules here that have an immediate effect and should be  
11 considered, be allowed to entertained at a date certainable and  
12 not just studied.

13 MR. BOHANNAN: Mr. Chair and members of the board,  
14 being on the rules committee -- and we welcome you to be on the  
15 rules committee -- I appreciate your frustration and I  
16 understand the same frustration because I've been on two years  
17 as well. We now have the protocol down where our intent was to  
18 adopt everything that we can today and start immediately on the  
19 next process of many of those rules changes. The process has  
20 to go to the board for review, it has to go to the archives, it  
21 has to be published and then we set a date. That's the actual  
22 process for the rules changes.

23 Our intent -- or at least my intent was to take  
24 those things that we could not approve today and roll those  
25 into the rules committee immediately and start discussing those

1 changes so we can do another iteration and we want to get it  
2 done this year.

3 MR. SPIROCK: Mr. Chairman, Mr. Bohannon, thank you.  
4 The words "immediately" and "it's my intent to roll on," I  
5 think we've satisfied at least with my current administration.

6 CHAIRMAN BRASHER: Well, good. Because Mr. Medina  
7 makes a good point. He has brought up something that I have  
8 been discussing, discussed with Sal Deal, a former member here,  
9 and Mr. Thurow for the past year or so. So exactly his  
10 situation -- the rules were in progress. They were worded and  
11 they've gone to the archives and they've been put in the  
12 correct font and somebody's corrected our grammar, and so  
13 forth. They have been formulated and they were in a process  
14 right now.

15 But what he raises is something that I  
16 specifically -- I can't even propose the language. I'm not a  
17 surveyor. I know what he wants. I need it too as an engineer.  
18 And he makes a very good point I want to see addressed. And I  
19 really don't want to bow wave this out into the future. Just  
20 following the procedural rules on getting these things  
21 published and advertised and heard takes forever. It takes an  
22 awful long time.

23 MR. BOHANNAN: Mr. Chair, we actually now have the  
24 definitive process that we can actually try to get that done in  
25 a timely manner. But it also needs to be vetted correctly.



1 And that's one of the things that these rules have been done  
2 so. They've been vetted. We're finding things that have not  
3 been vetted that need to be expanded. But those need to be vetted  
4 and we really need to work on them closely because there's a  
5 lot of instances where we need to really think through the  
6 downside.

7 MR. THUROW: Mr. Chairman, I believe that the board  
8 can address some of Mr. Medina's concerns under the current  
9 language, and I would suggest that the surveying committee will  
10 look anew at this problem and pursue remedial actions under the  
11 current language of both the rules and the Engineering and  
12 Survey Practice Act. So we're not going to brush this under  
13 the table. I believe the remedy is there and we will pursue  
14 it.

15 One final comment. This NCEES model rules, I  
16 believe it is 110.2, if I'm not mistaken -- that could be in  
17 error -- addresses this specific issue. And as we move forward  
18 with future interpretations of the rules, that we look to the  
19 NCEES model rules as a guide in formulating our own language in  
20 our particular administrative code.

21 CHAIRMAN BRASHER: Thank you. The issue that  
22 Mr. Medina has raised today, though, this is every day. This  
23 has gone on every single day. And I agree with him. When some  
24 language is put together, when something very specifically is  
25 inserted into the rules that addresses his concern and mine on

1 the same topic, I would expect there will be a list of other  
2 people who will oppose it, people who are going to be in  
3 opposition to this. Procedurally, what do we do. How can we  
4 proceed with -- what's our procedure for modifying the rules  
5 beyond what we do today. Do we rewrite them. Do we go through  
6 the publication process with archives. The public  
7 notification, have another hearing for a second round of rules.

8 MS. IDRIS: That's the way it should be.

9 CHAIRMAN BRASHER: That's what we'll be doing.

10 MR. SPIROCK: Mr. Chairman, can you schedule that for  
11 a date certain in the future?

12 MS. SAMORA: I think it needs to be assigned back to  
13 the rules committee and let them look at it. I think Ron has  
14 indicated that we can commit to following it through this year.  
15 That would be a great idea.

16 MR. BOHANNAN: Mr. Chair, just to reiterate, so it  
17 goes to the rules committee. The rules committee can take --  
18 we can use the NCEES guidelines, to start with. We can take  
19 input from -- suggested language from the general public. They  
20 would formulate a change to the rules. It has to go to the  
21 board. The board has to review it. The board has to act on  
22 it. It then goes to the state archives process. Once that's  
23 done, it comes back to the board, and we set a date at that  
24 time for a public hearing.

25 MR. SPIROCK: And the professional surveyors

1 committee has a chance under our current board structure to  
2 deliberate and discuss this as a committee to provide  
3 recommendations to you?

4 CHAIRMAN BRASHER: Sure.

5 MR. BOHANNAN: We're not limited by the  
6 participation. You're more than welcome to be put on the rules  
7 committee.

8 CHAIRMAN BRASHER: That's the process we have to get  
9 through today and this does go back to 2012. There's some good  
10 reasons and bad reasons for it taking this long, but going  
11 forward I'm optimistic that this will move faster.

12 MS. IDRIS: Mr. Chairman, I have one more comment on  
13 this topic. Reading 16.39.5.8 now, this big problem, these  
14 people are already in violation of our rules and our act. They  
15 are in violation. They can be disciplined. We have a big  
16 problem. But right now currently if they are brought to the  
17 attention of the board, they can be disciplined right now.  
18 Because, I mean -- and I agree the language needs to be brought  
19 back to the rules committee and thank them even more. But  
20 legally able to bind that organization by contract? You can't  
21 just jump -- they can be prosecuted right now. They need to be  
22 brought to the attention of the board.

23 CHAIRMAN BRASHER: Yes. I think some of the people  
24 who are licensees we're talking about today are setting  
25 themselves up to be legally -- or to bind several organizations

1 at the same time. And I think what Mr. Medina is saying is  
2 that's not practical. How can they really be doing a proper  
3 job when they're able to bind. They're working for so many  
4 people at that level beyond being just an employee but actually  
5 being like an officer of the corporation.

6 By the way, what will come out of this today is  
7 this topic right here, but I think as we go through this we'll  
8 find other items that we will go back to the rules process on.  
9 Are there any more comments on this one from anybody?

10 MR. ROLLAG: Mr. Chairman, members of the board, last  
11 time I was here I had mentioned ethics. In my opinion, for me  
12 to stamp somebody's thing and it says that I'm saying the  
13 survey was done under my supervision, if I stamp that, it had  
14 to be done under my supervision. And I think that ethically  
15 when we were doing that, we violated my ethics code.

16 But I have a question on 16.39.5.12. And I'm  
17 asking more or less for a clarification. To find that a  
18 surveyor in El Paso, for example. And I have my degree in  
19 geology or forestry or engineering or whatever, and I've been  
20 practicing surveying for the last 15 years, but I do not have  
21 the 18 semester hours in surveying that is required. I have  
22 many years of experience. I am not able to ask for an  
23 endorsement. Is that my correct assumption?

24 MR. THUROW: I'll defer to Mr. Valdez.

25 MR. VALDEZ: Mr. Chairman, members of the board, and

1 Mr. Rollag, this section defines in what year were you  
2 initially licensed in this proposed -- excuse me for a lack of  
3 words, but on this concept on this imaginary situation when was  
4 the individual initially licensed in El Paso, Texas.

5 MR. ROLLAG: Let's say 1992. Do you go to B?

6 MR. VALDEZ: We would look at letter C, licensure,  
7 prior to July 1st of 1995. So that individual would need to  
8 meet the requirements at that time. Letter C. If he was  
9 initially licensed in 1992, they would fall under letter C or  
10 letter D.

11 MR. SPIROCK: Our requirements.

12 MR. VALDEZ: Right. Those were our requirements at  
13 that time.

14 MR. ROLLAG: I was just curious because I hear a lot  
15 of complaints that I can't practice in New Mexico because they  
16 won't accept my degree. And that's the reason I hear a lot of  
17 this stamping. This survey has got a New Mexico stamp, have  
18 him stamp your survey. I'm not saying the survey was done  
19 poorly, but the guy that's stamping it did not supervise it.  
20 Thank you.

21 CHAIRMAN BRASHER: Thank you so much. Are there any  
22 other comments or questions on this? Hearing none, let's take  
23 a break for 15 minutes.

24 (A recess was taken from 12:23 to 12:43.)

25 CHAIRMAN BRASHER: Next on the agenda is part 6,

1 licensure for military service member, spouses and veterans.

2 Any comments from the board on this item?

3 MR. SPIROCK: Mr. Chairman, I have an exhibit.

4 Presumably it will be called Exhibit 16. So I'll reserve my

5 comments. Right now as written, it's fine.

6 CHAIRMAN BRASHER: Thank you. Any other comments

7 from the board? Are there any comments from our audience?

8 Hearing none, let's forge ahead.

9 Our next part to be considered is part 7, which

10 is our agenda "Miscellaneous." Are there comments from the

11 board on this? Part 7 pertains to revocation, suspension,

12 imposition of fines, reissuances of licenses and certificates

13 and disciplinary action. Are there any comments or questions

14 issues to be raised by the board members?

15 Hearing none, are there any members of the

16 audience who joined us, do they have any comments or questions

17 pertaining to this item, part 7?

18 Hearing none, the next item on our agenda is the

19 part 8, which is the Code of Professional Conduct. Are there

20 any comments, questions from the board regarding part 8?

21 MR. COOPER: Mr. Chairman, board members, Sammy is

22 handing out an excerpt from the "Professionalism and Ethics and

23 Surveying." It's work by a Dr. Frank, Steven Frank, Knud

24 Hermansen and Dan Scoccia, August 1997. I presented some of

25 this at our conference. I'm really a firm believer in the

1 language of this and the responsibilities that we have in our  
2 profession about working above the baseline, above the minimum  
3 standards. I don't know if the board would like to revisit the  
4 language in the Rules of Professional Conduct. Mr. Thurow and  
5 I have had some discussions about this in the past. I would  
6 like to -- I know I'm a newbie here. I wasn't in on the  
7 beginning on these real changes, but if the board chooses to  
8 revisit this section of the rules, I would like to have him  
9 consider the language of this handout I've presented as an  
10 exhibit.

11 CHAIRMAN BRASHER: And where specifically would you  
12 see that this fit?

13 MR. COOPER: Anywhere. My feeling is it would be an  
14 introductory paragraph under the Rules of Professional Conduct  
15 in some way. And then the rest of it outlines how you achieve  
16 this standard of care and our duty to society at large.

17 MR. SPIROCK: Question for Mr. Cooper. Earlier in  
18 today's hearing, we discussed the definition of ethics as it  
19 currently exists in NMAC, and I believe we decided that at a  
20 future date or a future consideration that ethical definition  
21 ought to be expanded. I'm suggesting maybe as an alternative  
22 to today's rules of conduct that this idea as well as the  
23 morality of professional conduct be incorporated in that  
24 division either in addition to or in rule of changes to  
25 16.39.8.9.

1 MR. COOPER: Is that a question? Could you repeat  
2 it? I'm sorry. I apologize. I got lost.

3 MR. SPIROCK: Earlier we talked about -- going back  
4 to the beginning, we had a discussion about ethics. I related  
5 the story of my experience at NMPS. I thought we said okay,  
6 the definition of ethics as it appears in NMAC part 1 ought to  
7 be revisited and maybe expanded. This question is, does this  
8 language or portions thereof fall in there or in subsection 5  
9 or in 8 or in both?

10 MR. COOPER: I believe it falls under the Rules of  
11 Professional Conduct, Mr. Spirock and Mr. Chairman.

12 MR. BOHANNAN: I think here's a real good example. I  
13 like what has been presented to us, but here's a real good  
14 example of why we are taking the process through this hearing  
15 for the general public. Let me just use the second paragraph  
16 in what was handed out. The standard of care expected of the  
17 surveyor to provide to the client not only what the client  
18 wants but also what the client needs. That is a very good  
19 statement, but I've seen a lot of instances where the client  
20 wants the cheapest product with the cheapest price and then it  
21 brings a complaint against an individual because of areas that  
22 are outside of minimum standards or normal business practices.  
23 So here's something that's -- the intent is good, but needs to  
24 be vetted so that we work through all those issues in a proper  
25 format so that we can get a rule down that applies not only



1 both to the surveyors but the engineers because this is the  
2 professional conduct section. So I think this one is also  
3 another good source for us to bring back up and vet it out and  
4 then find out which is the appropriate place to put it.

5 CHAIRMAN BRASHER: Mr. Cooper, so what you've handed  
6 out is a document which you've entitled or somebody has  
7 entitled "Standard of care - duty owed to society." It's  
8 excerpts taken from "Professionalism and Ethics in Surveying"  
9 by these authors in 1997. Do you see that the Rules of  
10 Professional Conduct -- they fall short. Do they lack these  
11 items in that document?

12 MR. COOPER: Yes, somewhat. Mr. Chairman, board  
13 members, I believe that the Rules of Professional Conduct lack  
14 a little -- they are very well written. I would like to give  
15 you an example of this. It's like Mr. Rollag said in his  
16 presentation that the ethics are different for different  
17 people. We think that they're all the same, but really they're  
18 not because we have different opinions on things.

19 One of the cases that we struggled with on a  
20 complaint is an interpretation of what was due to the client.  
21 I'm getting back to the statement that Mr. Bohannon read, "The  
22 surveyor or engineer is obligated to determine what the client  
23 needs and ensure that these needs are met, not only what the  
24 client wants but what the client needs." We've had cases where  
25 the client was expecting something. The surveyor was providing

1 something else and the client was not getting or didn't know  
2 what he needed. The surveyor failed to tell him what needed to  
3 be done to achieve his goal and it didn't get done. It wasn't  
4 in the contract. It wasn't oral or written what the surveyor  
5 was going to provide to the client. The surveyor was expecting  
6 the client to do something; the client didn't know what to do.  
7 That initiated a complaint. That's a failure to that client.  
8 The surveyor should have outlined everything that needed to be  
9 done to achieve his project whether he wanted to do it or not.  
10 Outline it. Here's the cost, here's what I will provide and  
11 this is what it's going to take. Some of it was basically  
12 applying to the county signing the application. The owner had  
13 to sign the application; the surveyor couldn't do it. The  
14 surveyor didn't tell the owner he had to sign the application.  
15 So the project was delayed and delayed and delayed. And so in  
16 that instance, I believe that we as professionals have an  
17 obligation to not only provide what the client wants but what  
18 he needs.

19 CHAIRMAN BRASHER: Doesn't the ethical dilemma arise  
20 when you identify to the client you need to do these eight  
21 things? These are things you need to do, and the client tells  
22 the surveyor, "I only want you to do these six. Skip those  
23 other two." And then the dilemma on the part of the surveyor  
24 is whether they do it anyway, not do those other two items that  
25 he needed, that he left out.

1           MR. COOPER: Mr. Chairman, members of the board, I  
2 think you're trying to separate a business decision from a  
3 standard of care duty decision. You have to make one of the  
4 two decisions. You either have to make a decision from a  
5 business standpoint, do I provide those services and get paid  
6 for them without doing the last two items. Is that going to  
7 satisfy the needs of that client and have you provide the  
8 product for him to complete that job. Or by not completing  
9 those two items, are you going to fail in your requirements,  
10 your professional requirements. Which one is it. If you're  
11 going to fail in your professional requirements, then the  
12 business decision is irrelevant.

13           CHAIRMAN BRASHER: That's the ethical dilemma, it  
14 seems to me.

15           MR. COOPER: Mr. Chairman, in my mind it's not an  
16 ethical dilemma. You either follow the requirements and  
17 provide the product that you owe society; health, safety and  
18 welfare. It would be like designing a bridge and saying, well,  
19 the client wants me to put in number 8 rebar and I'm  
20 recommending something else.

21           CHAIRMAN BRASHER: To me it's obvious, but that's the  
22 dilemma for somebody who sees the dilemma and they have to  
23 decide. Do I want to do what's good for business or do I want  
24 to do what's right as a professional. That's what I mean by  
25 that. Somebody has to decide which side to take.

1 MS. SAMORA: Mr. Chair, I just want to reiterate what  
2 Ron has already said is that, you know, we have a rules  
3 committee and we've reviewed all this, and these are great  
4 suggestions and we need to look at them. But I mean, we went  
5 through all that. Remember we went through this Professional  
6 Code of Conduct. So we have a process. So I think it's  
7 appropriate to bring it up. I just don't know how much we want  
8 to discuss the details of it. Let's just sign it back to the  
9 rules, let's look at it. Because you remember when we did  
10 these rules of conduct, I mean, you and I looked at the rules  
11 committee. We had more language in there; we took it out. It  
12 does take that effort. You have to kind of go back -- you have  
13 to go back to the committee and then come back. It's all part  
14 of the process. I just think that that's what we need to do.  
15 We don't want to parse the language at this meeting.

16 MR. BOHANNAN: Mr. Cooper and Ms. Samora, what I'm  
17 getting at -- and you guys did that actually before I started.  
18 Does it make sense to create another section or do we want to  
19 take some of these ideas, as well as these other ideas that  
20 we're talking about today, and incorporate them into the  
21 existing section. So when I look at part A of the Rules of  
22 Professional Conduct, where, for instance, does this fall?  
23 Does this really fall under the public safety, health, welfare  
24 section, or is this a new section? I'm just trying to throw  
25 that out to get a feel for it so when we go back from this

1 section --

2 MS. SAMORA: I don't know. I haven't had time to  
3 think about it.

4 CHAIRMAN BRASHER: This speaks to conduct and ethics.  
5 What Mr. Cooper has handed out speaks to conduct and ethics.  
6 Here's what we can do. We can review the Rules of Professional  
7 Conduct, we can act on them and approve them as they are. And  
8 our forthcoming work on rules and other areas, we can choose to  
9 incorporate this language possibly as -- if this is  
10 appropriate, a preamble or something to the Rules of  
11 Professional Conduct applying to engineers and surveyors and  
12 the forthcoming rule revision. So we can use it. We can  
13 decide where to put it in and where it would fit in our next  
14 round of rules, forthcoming round of rules to address all the  
15 other things that have come up today.

16 MR. THUROW: Mr. Chairman, members of the board, I  
17 have a minor edit to propose, please. For A, paragraph E, the  
18 third line where it says, "Permit the use of their name or firm  
19 in connection with any business," I would like to insert the  
20 name -- or insert "name" between "firm" and in." So the  
21 sentence would read, "Use or permit the use of their name or  
22 firm name in connection with any such business venture," et  
23 cetera. I'm on 16.39.8.9(A), paragraph E, third line, A1(E).  
24 It's 16.39.8.9 A1(E) insert the word "name" between the words  
25 "firm" and "in." So the sentence reads, "Permits the use of

1 their name or firm name in connection with any such business  
2 venture." One word. That's all.

3 MR. SPIROCK: I have a concern with that. You may  
4 engage me as Cliff Spirock. I could also engage you after  
5 tomorrow as Spirock Family, LLC. The name has changed.

6 MR. THUROW: But it says "or." It says, "their name  
7 or firm name." And I think "firm or firm name" will be a  
8 little more legible.

9 CHAIRMAN BRASHER: I believe the intent is clarify by  
10 simply inserting the word "name" or "firm name" in connection.

11 MR. SPIROCK: What about "person firm" or "firm name"  
12 if you really want to blanket it.

13 MR. THUROW: Well, I believe the intent is clarified  
14 by simply inserting the word "name" or "firm name" in  
15 connection. So it's the use of their name or firm name in  
16 connection. So it's just further clarifying the intent of the  
17 paragraph, in my estimation. It's a minor detail.

18 CHAIRMAN BRASHER: Mr. Bohannan.

19 MR. BOHANNAN: I think I'm in agreement with that.  
20 We had a case last year where firms and firm names and  
21 associations with firm names that I presided as the hearing  
22 officer was very important in that case. And so I think that  
23 is very appropriate.

24 MR. TONANDER: Mr. Chairman, one question. Would  
25 this create an obligation, then, of the firm if they learned

1 that their name was associated with a project that was  
2 untoward? Would that create an obligation to then report to  
3 this board?

4 CHAIRMAN BRASHER: Well, I think it is otherwise  
5 required under the Rules of Professional Conduct that they have  
6 to anyway.

7 MR. TONANDER: Well, a firm -- I guess I'm thinking  
8 of two points here. Whether or not they would have to, A; and  
9 B, is a firm actually regulated under the rules? Can we  
10 regulate a firm or can regulate an individual who is licensed?

11 CHAIRMAN BRASHER: Well, regulating the individual --  
12 we regulate the individual by his name and by his or her firm  
13 name. So it's not the firm. It's not really the firm. It's  
14 the person who is in possession of the firm, the use of their  
15 name or firm name. Their name or their firm name.

16 MR. BOHANNAN: Have you got an example?

17 MR. TONANDER: I guess another way of looking at this  
18 is one big decision we were discussing earlier, assuming they  
19 are in responsible charge or have signatory authority for the  
20 company. But let's say that it's not that level of LS or not  
21 that level of PE, that it's a trench employee, if you will, who  
22 recognizes that the company name has now been associated with a  
23 project that has no engineering effects. That PE is not in a  
24 position to really manage the company or direct the company to  
25 do anything. How would that be handled? Or we wait and find

1 out?

2 MR. BOHANNAN: I can provide my opinion.

3 MR. TONANDER: Please.

4 MR. BOHANNAN: I think this is very appropriate. So  
5 what you have is you have an employee that's a professional  
6 engineer who falls under our act, who is working for a firm  
7 that has knowledge or direct knowledge or believes that they're  
8 not following -- the business ventures are fraudulent and  
9 dishonest ventures, in my opinion, has the obligation under the  
10 act to report that to this board. And that's actually a case  
11 that we heard last year disposed of occurred. There was a  
12 dissolution of a firm, and through that dissolution a forensic  
13 accounting was provided and it uncovered fraudulent acts. And  
14 so, yes, I think that the firm name needs to added. I think  
15 it's a very good clarification.

16 CHAIRMAN BRASHER: The next paragraph, paragraph F,  
17 says that you're required to inform the board of any violations  
18 of this code. You have to do that anyway, cooperate with the  
19 board in an investigation. But I will agree that inserting the  
20 "name" after the word "firm." Don't let their company's name  
21 be used either in connection with some all-colored business  
22 venture. I would insert the word "name" after "firm."

23 Any more discussion on this? Anybody who's  
24 joined us here in the audience, a comment on this idea?

25 MR. MEDINA: Just on the firm one, or you got the



1 tail end for public comment on the entire section?

2 CHAIRMAN BRASHER: Do you have a comment on that,  
3 what we were just talking about, using the word "name" or "firm  
4 name"? What other comments do you have on the rules, part A?

5 MR. MEDINA: I just have more of a clarification or  
6 an explanation, I guess, regarding 16.39.8.9(A)(D) which  
7 states, "Shall not reveal facts, data or information without  
8 prior consent of the client or employer except as authorized  
9 required by law or this code." So A states for the protection  
10 of public safety, and then we have that same definition again  
11 under "Professional Relationships with the Employer and  
12 Clients." So I was curious for clarification on D on the  
13 first -- under paragraph A, on why that's in there. From a  
14 survey point of view, with our boundary data when we call the  
15 surveyors asking for information, I may have missed -- they  
16 have pulled a document that I couldn't get ahold of. I've run  
17 into the problem where the other surveyor doesn't want to  
18 extend that professional courtesy.

19 And in dealing with issues on the boundary side  
20 where you may miss an easement or a document that may be  
21 relevant to where we're finding evidence as to the location of  
22 a boundary, it kind of affects the outcome and may cause damage  
23 to the owner. So I was curious, I guess, how that plays in not  
24 to reveal facts from a survey point of view. I do understand  
25 on the relationship with your clients and on paragraph D,

1 having that in, but I didn't know the relevance of it in  
2 paragraph A for public safety.

3 CHAIRMAN BRASHER: I think that one was speaking  
4 to -- that's A1(D) was speaking to releasing information that  
5 you've gathered, work you've done for your client, and I don't  
6 think it was really speaking towards the sharing of information  
7 professionally amongst your colleagues. That's what I think.  
8 D says that the licensee shall at all times shall not reveal  
9 facts, data or information without prior consent of the client  
10 or employer except as authorized or required by law or this  
11 code. So the courts could get it out of you. But to give up  
12 something like a client confidentiality, I think is what it's  
13 talking about here, I don't think it's speaking towards not  
14 cooperating with another surveyor, but --

15 MS. SAMORA: But having looked at that, maybe it does  
16 open itself up to a little misinterpretation. Because we have  
17 to be careful what we write in here. I don't know. Now that  
18 I'm looking at it --

19 CHAIRMAN BRASHER: It speaks to cooperating.

20 MR. SPIROCK: Along that same line, I support  
21 Mr. Medina that perhaps a topic for the rules committee at a  
22 future date prefaced by the surveyors to be discussing it. The  
23 state of Arizona requires that if you want to cross a monument  
24 being in substantial disagreement where you intend to set the  
25 monument, you must call that prior surveyor. In New Mexico

1 it's a good idea. Perhaps that type of language expanded to  
2 include the cooperation on the other side of the street of  
3 disclosing material information to the surveyor. The cause  
4 would be in order. But again, the language and the words are  
5 complicated to discuss at this hearing.

6 MR. THUROW: Mr. Chairman, members of the board, and  
7 Mr. Medina, I think the intent of D is not in the realm of  
8 extend professional courtesy of data that are required in order  
9 to effectuate a proper survey. I believe the intent here is  
10 you cannot act upon privileged information that you obtain from  
11 the client. As an example, I'm surveying a lot for a client  
12 and I'm also surveying the one next door and someone asks me  
13 why does he want the one next door surveyed. And I reveal  
14 that, well, he's going to buy that because he's going to expand  
15 his existing shopping center. Well, that person runs out and  
16 buys that lot first based on the information that I provided  
17 him.

18 So I think that's the intent here is that you're  
19 not revealing privileged information. An easement or something  
20 whether of record or not that is in possession of another  
21 surveyor who through the lack of common courtesy will not  
22 provide that to is not the intent here. I believe it is  
23 specific towards the example that I've just provided. At least  
24 that is my interpretation.

25 CHAIRMAN BRASHER: Mr. Medina's and Mr. Spirock's

1 comments go beyond that. Perhaps there ought to be something  
2 in here that basically requires a surveyor to cooperate with  
3 another one.

4 MR. MEDINA: Mr. Chairman, if I may, members of the  
5 board, the thing wasn't to restrict anything from D. I  
6 understand paragraph D. I guess my question was for paragraph  
7 A. I'm getting confused myself. But paragraph A, Section 1(D)  
8 is the one that I was focusing in on and not paragraph D,  
9 item --

10 MR. THUROW: Well, isn't that what I was referring  
11 to, Mr. Medina? A1(D). Is that not the one you were referring  
12 to?

13 MR. MEDINA: Yes. I got myself confused.

14 MR. TONANDER: I understand what you just said about  
15 the intent of it. But of course, as Ms. Samora said, the  
16 intent -- to be careful with the specific words. You mentioned  
17 one word that maybe you were going to insert and that was  
18 "privileged." If it was inserted prior "shall not reveal  
19 privileged facts, data or information," that would certainly  
20 clarify your intent, which I agree.

21 MR. THUROW: We can do nothing about discourteous  
22 surveyors, Mr. Medina. I do agree that inserting the words  
23 "privileged information" would add a lot to the intent of --  
24 naming that survey data are not necessarily privileged data,  
25 and it's up to the particular possessor of that information

1 whether he wishes to share it. I don't know how they can be  
2 compelled to do so.

3 MS. SAMORA: Mr. Chair, I notice that when you look  
4 at part D6, you know, kind of -- the professional relationship,  
5 you kind of say a similar thing. And so it may be a little  
6 confusing. A1(D) we added that language, so maybe it needs to  
7 be taken out or readjusted a little bit. Because we have it  
8 under "Professional Relationships with Employer and Client."  
9 So what we don't want is two sentences that, you know, people  
10 read it and say, well, how is it any different or one says one  
11 thing or --

12 MR. SPIROCK: I'm up for adding "privileged" to  
13 subsection 6 in addition.

14 CHAIRMAN BRASHER: The new A1(D) says the same thing  
15 as D6.

16 MS. SAMORA: Well, I'm saying to me it's kind of the  
17 saying the same thing. That's what I see. So in retrospect,  
18 looking at it, to me it's saying the same thing.

19 MR. THUROW: Let's put "privileged" in 6.

20 CHAIRMAN BRASHER: What were you explaining to her?

21 MR. SPIROCK: I was explaining the distinction of  
22 using this as a crutch the way it is currently written for one  
23 surveyor not providing information to another surveyor even  
24 though that information might be public record.

25 MS. SAMORA: That's possible.

1 MR. SPIROCK: "I haven't talked to my client. I  
2 can't give you the plat map that was recorded in 1942 that I  
3 haven't snapped a photograph of before the fire at the  
4 courthouse. Tough." Well, concerning the word "privileged,"  
5 might say, hey, it's public information. I'm not going to use  
6 that as a crutch.

7 MR. MEDINA: This is my opinion. "Privileged" is a  
8 great word to add in that would make it simple.

9 CHAIRMAN BRASHER: And it will assume that the  
10 surveyor can tell what is privileged.

11 MR. THUROW: Mr. Chairman, members of the board,  
12 there is redundancy here and I'm wondering if it would not be  
13 wise to take A1(D) and strike that altogether and go to D6 and  
14 add the word "privileged" there.

15 MS. SAMORA: Because they say the same thing.

16 MR. THUROW: So let's strike the modified the  
17 language and add simply the word "privileged" data or  
18 information, or would you insert "privileged" between just  
19 before "information" or before "data"?

20 MR. TONANDER: I would suggest after 3(D) so it  
21 covers all three words.

22 MR. THUROW: "Reveal privileged facts, data or  
23 information." So we would simply add one word of modification  
24 to 6(D) and strike A1(D) in its entirety.

25 CHAIRMAN BRASHER: A1(D) does speak to except as

1 required by law.

2 MR. BOHANNAN: I think what we have to do is step  
3 back one step and look at part A in its entirety. A is dealing  
4 with the public safety, health and welfare and property. D is  
5 professional relationships with the employer or client. So I  
6 think what you want to do is have -- you still want it in both  
7 sections. Because one is a generic public safety welfare  
8 section, and D is professional relationships with your employer  
9 and client. I'm not disagreeing that we may need to look at  
10 all of this in the future, but I think at this point in time I  
11 think we should just add "privileged" in both sections is what  
12 my recommendation is. I think it had a lot to do with that.  
13 And then we can go back and say do we need to do some  
14 structural format changes to the whole thing, if that makes  
15 sense.

16 CHAIRMAN BRASHER: Because D6(B) puts that  
17 "authorized by or required by law" tag on 1(D). So I agree  
18 with Mr. Bohannan looking at it now that we would insert the  
19 word "privileged" in both sections.

20 MR. THUROW: That would simply be a minor  
21 modification. I believe counsel would agree with that.

22 MR. WORD: Yes.

23 MR. BOHANNAN: Mr. Chair, I would just like to ask  
24 the board, is there anything else that -- especially since we  
25 have essentially a new board, is there anything else that we're

1 missing? Is there any other subjects and topics that we're  
2 missing that we can put on the rules committee as we kind of go  
3 back through this again?

4 CHAIRMAN BRASHER: Such as?

5 MR. BOHANNAN: That's what I'm asking. We've got  
6 fresh eyes looking at this, so is there something that we have  
7 missed in the professional conduct portions that we need to  
8 discuss that's not here?

9 MR. SPIROCK: I hate to mention it at this stage, but  
10 you have to realize that this entire process is intimidating  
11 for fostering new created fun that addresses your question of  
12 is there anything else. I loath to mention it now for the sake  
13 of taking your time and the others' time. So as long as  
14 there's a process and an active rules committee that we may  
15 tender such good thoughts to, I'm satisfied.

16 MR. BOHANNAN: There is. I mean, that's what there  
17 is. I'm just saying is there something that's the low hanging  
18 fruit right now that we've missed? We always have that ability  
19 to go in and change the rules. It's just it's a cumbersome  
20 process. And so what I'm looking for is any low hanging fruit  
21 that we've missed that we can throw down the topic so we can  
22 get up Monday for the next round?

23 CHAIRMAN BRASHER: Any comments? Let me -- before we  
24 close here, let me ask Mr. Word to help us with the distinction  
25 between the word "privileged" and "confidential" as it might be



1 used here.

2 MR. WORD: Thank you, Mr. Chair. Members of the  
3 board, I was just telling Mr. Chair that I have a little  
4 concern about the use of the word "privileged" as it has a  
5 specific legal meaning of evidence in another legal context  
6 that could possibly create some confusion. It may not -- the  
7 legal definition may not be exactly what the board intends  
8 here. I would just respectfully suggest that the board also  
9 consider another term such as "confidential" in the place of  
10 "privileged" or at least think of how this would play out and  
11 what your intent is in covering that issue of information that  
12 is obtained by the surveyor.

13 MR. TONANDER: Why don't you share the definition.

14 MR. WORD: Well, I knew you'd ask that and I don't  
15 have a dictionary here. But there are privileges recognized in  
16 the Rules of Evidence of New Mexico and the Federal Rules of  
17 Evidence does have specific meanings. The attorney-client  
18 privilege you're all aware of. And it's a privilege to not  
19 share information. As recognized by the courts, that's a very  
20 crude definition whereas confidential is a broader term. You  
21 share something with me in confidence, in my professional  
22 capacity as a surveyor, I don't know that there is any  
23 requirement -- I don't recall that the statute or the reg's  
24 anywhere else talk about privileged information provided to the  
25 engineer or surveyor.

1           CHAIRMAN BRASHER:  Would it be wrong or somehow  
2 overkill to say privileged or confidential?  "Privileged or  
3 confidential information shall not reveal privileged or  
4 confidential facts, data or information."  So whichever way  
5 it's considered, it's outruled.

6           MR. SPIROCK:  I'm more comfortable with that,  
7 Mr. Chairman, than I am with either of the options.  I mean, we  
8 have "privileged" in a legal connotation.  And not being a  
9 lawyer and not knowing what that means bothers me.  But to a  
10 public layman perception, privilege says in your own smarts and  
11 from what the client told, you don't disclose that.  But  
12 "confidential" gives me more trouble because you don't know  
13 what's confidential sometimes until it's discovered, and later  
14 you meet with your client and he says, "Don't tell anybody  
15 that."  Ethically, you've got to say, well, it's going to  
16 endanger the public.  Or if it's something that's in the works,  
17 okay.  So just using "confidential" bothers me not to let the  
18 cat out of the bag.  Your client knows that it's confidential.  
19 Putting both will confuse the hell out of anybody, I doubt, but  
20 the intent is there.

21           MR. THUROW:  Mr. Chairman, members of the board,  
22 while I am loathed to disagree with counsel, I believe that  
23 "privileged" is the better word to describe a professional  
24 relationship between a client and surveyor or engineer.  
25 Perhaps you're a part of a design team and have access to a

1 plethora of information which the client, while not necessarily  
2 confidential, would not want you to discuss with other  
3 entities. And so I would prefer to stay with the word  
4 "privileged," understanding the pitfalls that may be associated  
5 with that.

6 MR. WORD: Mr. Chairman, members of the board, I  
7 guess I was just trying to raise the issue. I don't have a  
8 strong opinion and I'm not giving you advice. I'm just  
9 suggesting that you consider that. And that's a good argument.

10 MR. TONANDER: I actually completely agree with you  
11 to have both in there. In my mind, confidential is a subset of  
12 privilege. There is certain information that's often deemed  
13 confidential, part of the nondisclosure, but it's very itemized  
14 as to what it is. Privileged is more encompassing. But if the  
15 legal definition is something narrower, I think we accomplish  
16 it by using both words together.

17 CHAIRMAN BRASHER: I would say it was covered using  
18 both words. Because if a client were to bring a complaint  
19 against a surveyor for revealing -- if we had just  
20 "confidential," he could go to Perry and say this surveyor  
21 revealed this confidential. Or if "privileged" was in there,  
22 he revealed this privileged information. I say both words  
23 cover the basis, it seems to me.

24 MR. BOHANNAN: Rick, so I looked up "privilege." So  
25 really where I think I'm coming from is, you know, having sat

1 in as a hearing officer for a couple cases, I think this is  
2 really where we need to kind of look at if someone comes in and  
3 says, okay, you've violated the act because you've done --  
4 whether it's privileged or confidential. And privileged, it's  
5 basically under the evidence rule definition of privilege,  
6 rules excluding confidential communication from being  
7 admissible as evidence in court. It seems like we're looking  
8 for when we go into an actual case, it's actually what is that  
9 evidence. And so could you give us your thoughts on if this is  
10 used for a complaint, how that would be then interpreted?

11 MR. WORD: Sure. I'm speculating. I can imagine a  
12 lawyer arguing that while your board should stick to the more  
13 legal definition of privilege and that may or may not be the  
14 board's intent in inserting the term here as is being  
15 discussed. So --

16 CHAIRMAN BRASHER: There's not a problem with both  
17 words, though, is there? They're not conflicting in any way,  
18 really.

19 MR. BOHANNAN: I think there's a difference.

20 CHAIRMAN BRASHER: Well, there's a difference, but  
21 they're just shades of the same thing, aren't they?

22 MR. BOHANNAN: If I may, I'll take Cliff's example.  
23 And I can see that coming up. If I violate somebody's  
24 confidence by letting a project be known or done something with  
25 that, but that's different than a privilege under this

1 definition. I don't know. I feel like there's a difference.

2 I don't know.

3 MS. IDRIS: Mr. Chair, I'm going to give you another  
4 look at this. You know, I'm a professor and I don't really  
5 deal with these things at all, actually. But looking at this,  
6 like part D, the intent of it, really if you don't put in  
7 "privileged" or "confidential" it has a lot of teeth in it.  
8 It's very strong. Basically, if you keep it like it is, it's  
9 basically telling you that you have -- it's basically sending  
10 you back to the client, and you have to have prior consent of  
11 your client about the facts before revealing anything.

12 So if this is the intent, then, you know, it has  
13 a lot of teeth. If that's not the intent, if you put in  
14 "confidential," you really alter it because then how can it be  
15 confidential. If you put in "privileged," that creates another  
16 dimension to it. Because what is privileged like counsel is  
17 saying. Right now the way you have it is really strong.

18 CHAIRMAN BRASHER: So it's completely covered just by  
19 saying anything.

20 MS. IDRIS: Right now I'm telling you I say you have  
21 to go back to your client and check with him. That's basically  
22 what it says. So what is really the intent behind this. Do we  
23 want to keep it like this, very strong, go back to your client,  
24 talk to him, courtesy, and then you can decide what's  
25 privileged and what's confidential or you can water it down.

1 MS. SAMORA: Mr. Chair, I think that was the whole  
2 point of the people's comment is that it could prevent them  
3 from getting known documentation. So that's why we were  
4 suggesting putting the word "privileged" in. That was the  
5 whole point is because it was too restricted. And somebody  
6 could use that as, like I said, a crutch to say I'm not giving  
7 you this information. Again, there's just a lot of things.  
8 We're talking about one word and seeing what a difference it  
9 can make in the language.

10 CHAIRMAN BRASHER: Well, what Dr. Idriss is talking  
11 about now is just leaving it as it is. Because it's  
12 all-inclusive. There are no distinctions to be made. You just  
13 don't reveal anything without getting prior consent not unless  
14 you're bound by law or court ordered.

15 MR. SPIROCK: Mr. Chairman, I ask the question what  
16 protects the public more? In my opinion, adding the language  
17 "privileged" and "confidential" -- and even if it is only one  
18 instance in my mind -- allows Mr. Medina to call me, and as  
19 long as in my business relationship with a client I think this  
20 is not privileged under the legal definition. The client  
21 didn't tell me it was confidential. And he says tell me about  
22 the bushes that are hiding in the monument in the far northeast  
23 corner. I'd like to tell him that surveyor to surveyor. Some  
24 of my brethrens would say, no, I'm precluded from doing that  
25 because of the NMAC. They do this sort of stuff. So I think

1 the public is better protected with Mr. Medina's recommendation  
2 that is now translated into adding the words. But leaving it  
3 as it is isn't telling anybody anything because it can be  
4 interpreted that you can't even speak about a project. Thank  
5 you.

6 MS. IDRIS: So I am not in favor of one or the other  
7 right now. What I was saying is right now the way it is is  
8 very strong. If you add one of those words, it waters it. It  
9 makes it a lot more flexible. Depends what is actually the  
10 intent of it.

11 CHAIRMAN BRASHER: Are there any other comments on  
12 this?

13 MR. TONANDER: Specifically to your question what was  
14 the intent of it, that's where this discussion started, when  
15 the intent was really to keep information that would be  
16 considered privileged from being distributed freely. I think  
17 that's where we're trying to narrow it down.

18 Now, on the cautionary tail of a specific word,  
19 just mention "privileged and confidential" where it probably  
20 should be "privileged or confidential."

21 CHAIRMAN BRASHER: Okay. Are there any other  
22 comments on this? Any other comments from anybody who's joined  
23 us today? Hearing none, those are the rules that we had set  
24 out to discuss today. Let me ask this: Has everyone signed  
25 the attendance sheet?

1 MR. SPIROCK: Mr. Chairman, I apologize for  
2 cross-communication. I was under the assumption that since we  
3 went through Exhibits 1 through 8, that we're going to go ahead  
4 and proceed through Exhibit 17?

5 CHAIRMAN BRASHER: Right. I don't think we numbered  
6 those. Did we, Perry?

7 MR. VALDEZ: Exhibits 12 through 17? We did.

8 CHAIRMAN BRASHER: I got off the agenda here. We do  
9 need to do that.

10 MS. SAMORA: Do we have copies of those exhibits?  
11 Because I don't see them.

12 CHAIRMAN BRASHER: We do, now that you mention it.

13 MR. BOHANNAN: They weren't handed out this morning.  
14 So, Mr. Spirock, what you're saying is that we should go  
15 through these other exhibits and discuss these? Is that what  
16 your question was?

17 MR. SPIROCK: No. Whatever the disposition was. I  
18 mean, I've got one that I've offered that I was waiting until  
19 you got to Exhibit 16 to make a comment or reserve comments or  
20 answer questions. I know Mr. Thurow had Exhibit 15 which was  
21 discussed earlier under a different agenda item. I'm just  
22 curious. What about all the people that provided that level of  
23 effort to give you an exhibit before this hearing? That's  
24 going to be their disposition.

25 MR. BOHANNAN: And maybe we'll ask Rick this



1 question. So, Rick, really what we probably should do is under  
2 the title Exhibit 16 that we entered into the record, it was  
3 under part 6 of these comments. So I guess my question of you  
4 is, is anything in this Exhibit 16 that you provided, that we  
5 didn't discuss that we need to go back on part 6 and open and  
6 discuss?

7 MR. WORD: Mr. Chair, members of the board, what I  
8 just suggested to the chair was that he invite comments, just  
9 go through each exhibit if there are any additional comments.  
10 For example, Exhibit 15 was discussed at length, but there may  
11 be others and some other comments may have been addressed. But  
12 I would suggest for purposes of the record that you go through  
13 the additional exhibits sequentially and invite comment.

14 CHAIRMAN BRASHER: Our Exhibit Number 12 are public  
15 comments in the proposed amendments for Mr. Tom Rollag  
16 regarding 16.39.3. Does everybody have a copy of his comments?  
17 What this exhibit is is Mr. Rollag has written a letter to  
18 Perry Valdez regarding the proposed legislative revisions  
19 regarding the engineers and surveyors. And I'll ask Mr. Rollag  
20 to describe what he put into what is Exhibit 12.

21 MR. ROLLAG: Mr. Chairman, members of the board, I'm  
22 a licensed land surveyor in the state of New Mexico and Texas.  
23 And I may be able to answer some old windmills here. I  
24 practiced for a period of some 33 years prior to 2005. I got  
25 my degree in surveying engineering in 2005 from New Mexico

1 State University and at which time due to circumstances, I  
2 started practicing in what I call land surveying.

3 I participated in a photometric task force that  
4 took place approximately 12 years ago, 10, 12 years ago, and it  
5 was to discuss GIS and photogrammetry, which at that time both  
6 had issues with the Board of Licensure. I don't recall much  
7 about GIS being discussed, but there were several meetings  
8 regarding photogrammetry. At the end of that, the outcome of  
9 that task force was that at that time photogrammetry was not to  
10 be considered as able to be licensed. But it was a tool that  
11 was being used and it was the responsibility of licensed land  
12 surveyors to certify the correctness and not the  
13 photogrammetry.

14 So I disagreed with most of that. I think that  
15 it may be considered a tool, but most anything that anybody  
16 uses is a tool for them. That if I'm an engineer and I'm doing  
17 a highway project, the boundary, the traditional information  
18 that I get from the licensed land surveyor is a tool. And same  
19 thing. If I am a land surveyor and I get this photographic map  
20 from a photogrammetrist, to a surveyor it's a tool.

21 In 1972, I went to Eastern New Mexico University  
22 and got a degree in civil engineering technology, and from then  
23 on I have been practicing photogrammetry in one way or the  
24 other. It was my understanding there was no problem in the  
25 state of New Mexico until 1993. The law was changed -- or it

1 might have been '92 the law was changed for photogrammetry in  
2 the act, even though I protested and paid some guy in Santa Fe  
3 a lot of money to check into my ability to practice. I made no  
4 progress.

5           The law -- the practice act defines the  
6 definition of the engineering and practice of engineering --  
7 and this is something I have a problem with. That the practice  
8 of engineering may include the use of photographic methods to  
9 provide topographic and other data. That's an engineer that  
10 can do this. I feel personally and I've always felt that  
11 mapping, which is basically photogrammetry, is a surveying  
12 entity. It's not an engineering, although some of the people  
13 I've worked for in the past were engineers. I'm not saying  
14 they didn't know anything about photogrammetry. But if you  
15 look at the list of the engineering professions that are in  
16 what we've been talking about today, who have aeronautical and  
17 civil and electrical and chemical and all these, but there is  
18 not photogrammetry in there. However, an engineer is able to  
19 do photogrammetry. They may or may not know a lot about  
20 photogrammetry, but they can sign and seal. If I'm working for  
21 an engineer as a non-licensed independent individual, I was  
22 able to do that for a New Mexico engineer because they are able  
23 to sign and seal. They didn't know what the heck I did. All  
24 they wanted to know is was it any good.

25           I would like to see -- and I've felt this for a

1 long time -- that surveyors need to have some engineers,  
2 different professions through different subdisciplines, within  
3 the surveying discipline. And I've listed them as boundary  
4 pedestal, construction, photogramatics, instrumentation control,  
5 software mining, industrial, hydrologic and geodetic. Of  
6 these, currently you have to have I believe in the act three  
7 years of boundary experience. Construction, photometric,  
8 instrument control, software mining, hydrographic and geodetic,  
9 none of those necessarily have anything to do with boundaries.  
10 So if you had somebody that is -- I know of one firm here that  
11 does primarily only control. They'll set up control for  
12 highway projects or buildings or whatever you need,  
13 photogrammetry. That's all they do is they would not be able  
14 to be licensed as a surveyor.

15           When I applied for licensure as a surveyor, I was  
16 told you don't have any boundary. But photogrammetry is  
17 regulated by the surveying board, and it seems odd to me that  
18 somebody could be doing something that is regulated by the  
19 surveying board that is not recognized as experience. And I  
20 realize this may not be appropriate at this time. In two years  
21 or a year or when the rules committee does it again, I'd like  
22 this to be considered as either establishing some disciplines  
23 for surveying. And the board members of the surveyor committee  
24 in the past did not like this. They don't think that's needed.  
25 And there are some surveyors that have no problem with it.

1 I just feel that surveying as a profession is  
2 protective of their profession and rightfully so. But anybody  
3 that makes a measurement doesn't have to be a licensed  
4 surveyor, in my opinion. Maybe I'm not as protective as I  
5 should be. But if I see a highway patrolman out here making a  
6 measurement of an accident scene, that's their business. I  
7 don't think that as a surveyor that that should be my job.

8 Now, in photogrammetry we used to do that. We  
9 used to take photographs and have records of skid marks and all  
10 that of accident scenes. But again, I think that there's no  
11 problem if they're able to get the evidence.

12 So I'm really just asking for consideration for  
13 this to be done in the future. And if you have a problem with  
14 what my thoughts are, I'm more than able to entertain any  
15 questions.

16 CHAIRMAN BRASHER: Thank you, Mr. Rollag. Are there  
17 comments on this or questions of Mr. Rollag?

18 MR. THUROW: Mr. Chairman, members of the board,  
19 Mr. Rollag and I have wrestled with this issue for decades now.  
20 And I agree with him that we've never really come to an  
21 understanding of exactly the role that a photogrammetrist plays  
22 vis-a-vis engineering and surveying.

23 I do have a question, Mr. Rollag. Do you  
24 contemplate a specific exam in photogrammetry in order to  
25 qualify as a photogrammetric surveyor.

1           MR. ROLLAG: I've checked with NCEES. They do not  
2 have one. And that is one of the things that we've brought up  
3 in the past. ASPRS does have an exam. That exam I think could  
4 be used if you want to be qualified as a photogrammetrist. To  
5 my knowledge, and only to my knowledge, there have only been  
6 two people in the state of New Mexico that have been certified  
7 by ASPRS, myself and Tom Mann. And I don't know if Bohannon or  
8 Wilson are certified or not. I am no longer a member of that  
9 association/organization nor have I -- I did not renew my  
10 certification when I got dismissed from my photometric duties.

11           MR. THUROW: But you do contemplate a subtier of  
12 surveying known as a photogrammetric surveyor.

13           MR. ROLLAG: Correct.

14           MR. THUROW: And we know that professionally you have  
15 three criteria of education, experience and examination. So  
16 any subdiscipline of surveying that's created would have to in  
17 some way satisfy those three criteria; and as such, would  
18 probably have to be codified in the Engineering and Survey  
19 Practice Act from which board rules could be derived. And I'm  
20 not disagreeing with your position, Mr. Rollag. I'm simply  
21 suggesting that where this needs to go is when the act itself  
22 is taken under consideration. And the things that you  
23 contemplate in your suggestions to the board are codified in  
24 the act and from which rules are derived.

25           MR. ROLLAG: I don't have a conflict with that. Like

1 I said, I'm bringing it up now because I wanted to be clear.  
2 And this document I basically copied from the engineering  
3 section about the disciplines. And I don't know that the  
4 engineers -- I'm asking a question. Do the engineers, if they  
5 want to be an aeronautical engineer, is there a specific exam  
6 that they take?

7 MR. BOHANNAN: Mr. Chair, could I ask you to make  
8 sure we don't get locked in here and either take a five-minute  
9 recess or --

10 CHAIRMAN BRASHER: Let me mention this for the record  
11 here. I need to step out a couple minutes to just make  
12 arrangements for us to be able to stay past closing time if we  
13 have to from this building. In the meantime, Mr. Bohannan will  
14 fill in for me as the presiding officer.

15 MR. BOHANNAN: Mr. Rollag, I think what we are trying  
16 to do today is, again, surface and take into account the rules  
17 that are in front of us, this board. As I've mentioned before,  
18 what I would like to have, which I've already written down, is  
19 those areas that we need to discuss. I think what Mr. Thurow  
20 has indicated is that we have a basic issue of the act itself  
21 which has to go back in front of the legislature.

22 So I think what I would like to do is -- we've  
23 got this down, is probably hold a meeting where you could give  
24 your name to Mr. Valdez. We could actually invite you to a  
25 subcommittee meeting of the rules so that we could have a

1 little bit more time to discuss the differences. Because I  
2 think this is going beyond what we were intending to do today.  
3 We appreciate that you've brought this to the attention. It  
4 sounds like you and the surveyors have had decades of  
5 discussions.

6 MR. THUROW: Decades.

7 MR. BOHANNAN: We just want to make some progress,  
8 and I think this is a good format to do that.

9 MR. ROLLAG: That's fine. I would be appreciative of  
10 doing that.

11 MR. BOHANNAN: Okay. Any other things that you'd  
12 like to discuss other than that particular item on the  
13 definitions?

14 MR. ROLLAG: No.

15 MR. BOHANNAN: Okay.

16 MR. ROLLAG: I'll be happy to answer any questions,  
17 but the rules committee is probably a better forum.

18 MR. BOHANNAN: Okay. I appreciate it. That was  
19 Exhibit 12. Exhibit 13 Mr. Baker left. I think Exhibit 13, if  
20 I'm reading it again as we actually addressed, has been taken  
21 care of. Anybody have any other discussion on Exhibit 13? Any  
22 discussion from the audience?

23 Exhibit 14, again, also was, I believe,  
24 discussed? Anybody have any discussion on Exhibit 14? Exhibit  
25 14, which was read into the record, is public comments on the



1 proposed amendments from Mr. Gerald Donahue on 16.39.5.

2 Exhibit 15 we went through, Mr. Thurow's  
3 comments, which brings us to Exhibit 16, public comments on  
4 proposed amendments from Mr. Cliff Spirock on 16.39.6.

5 MR. SPIROCK: Mr. Acting Chair, members of the board,  
6 I've accompanied that recommended language with a cover letter.  
7 If I was outgoing enough, it should be self-explanatory. The  
8 intent of the amendment is unfortunate for me to be in my own  
9 words, but trying to follow at the same time formatted with the  
10 current NMAC. But essentially this expands proposed subsection  
11 6 to where there is the special exemption for military service.  
12 My suggestion is to have an additional -- not change the  
13 military acceleration but to have an additional privilege  
14 consideration by the board for individuals who have  
15 long-standing supervisory experience, who have had a New Mexico  
16 continuous residency for at least 15 years. My purpose for  
17 that is perhaps I know of many and sat and had had lunch with a  
18 few that have got no hope on the horizon. They're running  
19 their own business, have been for 20 years. There's no way  
20 they can take time off to complete their education to stand for  
21 the test in a conventional sense. So the language I'm  
22 submitting maybe doesn't give them any hope, either. It  
23 guarantees them nothing. But it does give them the opportunity  
24 for this board, your board, perhaps the professional surveyors  
25 committee event board, to impanel three people to listen to

1 what their education, experience, conduct would be and to make  
2 a determination and to advise them you need to do this. Advise  
3 them, okay, you can sit for the examinations or the answer is  
4 no. Thank you.

5 MR. WORD: Mr. Hearing Officer, members of the board,  
6 I certainly understand the intent of your proposal. I think  
7 you may not have been aware of the history of this section that  
8 you are proposing be amended, and it derives from a mandate  
9 from the legislature to all licensing boards, that they  
10 expedite licensure. So this is sort of saying this section I  
11 would suggest should be left just to military and your proposal  
12 might be better.

13 MR. SPIROCK: And if you recall, when we got to  
14 Exhibit 7 I had no problem with it. That's what it is front of  
15 you now. Most of the other items that have added additional  
16 language have been deferred for another time. I'm suggesting  
17 that this be deferred for another time.

18 MR. WORD: Okay. But again, this section -- all my  
19 client boards had to put this in pretty much in identical when  
20 it goes into their reg's at the direction of the legislature in  
21 a part that only dealt with veterans and their spouses.

22 MR. BOHANNAN: So let me get the spirit of this.  
23 Because I think we wrestle with this a lot when we're looking  
24 at applicants for engineering, when applicants don't meet the  
25 educational requirements. And that's really what this goes to.

1 And so I think this is going to take a lot of vetting because  
2 we deal with that every meeting is the educational  
3 requirements. At least one or two applicants that we deal with  
4 comes up with this.

5 MR. THUROW: Mr. Bohannan and Mr. Spirock, members of  
6 the board, the place where you need to effectuate a change is  
7 going to be in the Engineering and Survey Practice Act itself.  
8 And that, once again, as I mentioned to Mr. Rollag, probably  
9 has to be modified in order to accommodate the kind of rule  
10 that you contemplate. But the act itself stands in your way at  
11 this point as it does for applicants who might otherwise be  
12 qualified. They still must satisfy the requirements of law.

13 So I'm not suggesting that all those who enter  
14 here abandon hope, but that there are specifics that the board  
15 must comply with, the educational requirement.

16 MR. BOHANNAN: And I think what's important for the  
17 rules and for the board to know in general is that if we feel  
18 that it is needed to go to the act, to amend the act, we have  
19 friends in the legislature that will carry bills for us. But  
20 we need to start in July or now if we want to do that sooner  
21 than later. So I think this one, like I said, on the  
22 engineering side we have spent a few hours in my tenure  
23 discussing the requirements of people that aren't licensed.  
24 We've denied a bunch of licenses just because they don't have  
25 the education, period. That's point-blank.

1           MR. SPIROCK: Please don't misconstrue what I intend.  
2 This is not granting licensure by exception. It's granting a  
3 review of a candidate's experience with a panel of your board  
4 to determine whether or not he may become an applicant, and  
5 then only after the completion of the examinations could he  
6 afford his licensure or fail in the process. This is not  
7 grandfathering for no reason. This is saying there are some  
8 people that need special consideration. And I've given it some  
9 thought and my tenure is very brief here, but I would be more  
10 than willing to sit on a panel to listen to somebody who's been  
11 in supervisory practice for more than 20 years, who's been a  
12 New Mexico resident for 15 years, to see whether or not some  
13 member of that panel would suggest for your consideration  
14 whether or not he should take the test or advise him at that  
15 time I really think you need to take interval calculus to  
16 complete your worthwhile education, whatever the condition may  
17 be.

18           Mr. Chairman, my own son has been running my  
19 company for better than 20 years. He calculated that it would  
20 take him 16 years night school to be able to sit for the exam  
21 under our existing regulations. Part of that is because of the  
22 conflict between the acceptance between NMSU and UNM regarding  
23 his prior education down at State. He said by the time I  
24 figured it out, I wouldn't be able to make payroll.

25           MR. BOHANNAN: So I have on my list we're going to

1 take up yours and then we're also putting you on the rules  
2 committee to that. But we'll consider that. I just -- again,  
3 we've talked long and hard to look at that. With that, I'll be  
4 happy to turn this back over to the chairman.

5 CHAIRMAN BRASHER: For the record, I stepped out and  
6 I'm back in. I'm resuming presiding. We've completed the  
7 discussion on Exhibit 16, have we not? Is there any more  
8 discussion on that? Hearing none, we'll move on to Exhibit 17,  
9 and these are public comments on the proposed amendments by  
10 Mr. Hank Rosoff, 16.39.8.

11 MR. TONANDER: Mr. Chair, because of your return at  
12 this point, I'm not sure if the audience was asked if they have  
13 any comments on 16.

14 CHAIRMAN BRASHER: Any comments from anybody in the  
15 audience about this?

16 MR. MEDINA: Mr. Chairman, members of the board,  
17 Mr. Spirock, my ears perked up hearing the proposal on looking  
18 at reviewing applications for PE or PS minus the current  
19 educational requirements. It's been 20 years now for being on  
20 the surveying side that the educational requirements have been  
21 in effect. I myself have come up going to New Mexico State and  
22 I do understand and I've learned from individuals that were  
23 nonlicensed that took me underneath their wing when I came out  
24 of school, showing me, you know, the stuff that they've  
25 learned, the individuals that came before me that are licensed

1 before me before the requirement of the four-year degree, I've  
2 learned from them. I've respected them. I have the utmost  
3 respect for Mr. Spirock. However, we need to draw the line.  
4 Or the line has already been drawn or the bar has been set as  
5 to the requirements to become licensed. And decisions are  
6 made. Choices are made. Mr. Rollag has made a decision to go  
7 to school, get his degree and become licensed. It's a hard  
8 choice to make with families, your livelihood. But the bar's  
9 been set. And if you want to get that license, you have to  
10 make that hard choice.

11 I understand running a business for 20 years,  
12 being under the guidance of a licensed surveyor, but that line  
13 is drawn. I mean, we can't allow, for example, surgeons you've  
14 been watching for 20 years to come in and start performing  
15 surgery, start cutting someone up. We need to maintain that.  
16 That's my comments.

17 CHAIRMAN BRASHER: Any more comments from anybody  
18 regarding Exhibit 16? Hearing none, let's move to Exhibit 17,  
19 which is the comments on proposed amendments by Mr. Hank Rosoff  
20 regarding 16.39.8. What I have from Mr. Rosoff is a copy of a  
21 communication, presumably an E-mail that he must have sent to  
22 Perry Valdez here dated March 9th, 2015. And he appears to  
23 suggest that the word -- under 16.39.8.9, Subsection G, he  
24 recommends changing the word "associates" to "associations."

25 MR. THUROW: Mr. Chairman, it currently states under

1 G, "Associates with other license," and Mr. Rosoff is  
2 suggesting that the word be substituted "associations"?

3 CHAIRMAN BRASHER: Correct.

4 MR. THUROW: It would seem to me that "associates"  
5 refers to an individual, where "association" refers to an  
6 organization? Or are we talking about the relationship,  
7 association as a relationship? In this context I believe it is  
8 referring to a relationship, an association as a relationship.

9 CHAIRMAN BRASHER: In G he suggests changing  
10 "associates" to "association." So G says, "Associates with  
11 other licenses." Then it goes on to say, "Licensees shall not  
12 attempt to injure, maliciously or falsely, directly or  
13 indirectly," something "the professional reputation, prospects,  
14 practice or employment of other licensees." There's a word  
15 missing here, by the way, under G, I think. "Licensees shall  
16 not attempt to injure maliciously or falsely directly or  
17 indirectly" -- it's okay. Sorry. But that is how this word  
18 "associates" is used. "Associates with other licenses." And  
19 he's suggesting it should say "associations with other  
20 licenses." So that word "licenses," G, should be "licensees."

21 MR. THUROW: Because we're referring to individuals  
22 in relationships with other individuals.

23 MR. BOHANNAN: Mr. Chair, "associates" should still  
24 be correct, but I will entertain other people's thoughts.

25 CHAIRMAN BRASHER: I think that associates is

1 correct.

2 MR. COOPER: Mr. Chair, board members, can you  
3 explain to me what that means, what that says? That sentence  
4 makes no sense to me whatsoever on Section G. I'm sure it's  
5 because I missed my burrito this morning, but I have no idea  
6 what that sentence says.

7 MS. SAMORA: Are we talking about people who are  
8 licensed in other fields or something?

9 MR. COOPER: I have no idea.

10 CHAIRMAN BRASHER: So 16.39.8.9 is entitled Rules of  
11 Professional Conduct, and G is "Associates with other  
12 licensees." The licensee's association with other licensees.

13 MR. TONANDER: His interaction perhaps with other  
14 licensees?

15 MS. SAMORA: It's got the wrong word there.

16 MS. MEYERS: Mr. Chairman, a point of clarification,  
17 not a game changer. Whatever word is more descriptive to get  
18 the point across, whatever the point is.

19 MS. SAMORA: It's saying that your interactions with  
20 other licensees and it's saying what you will do. It's just  
21 not worded very well.

22 MR. WORD: It should be "licensees."

23 MR. THUROW: "Interaction" is fine.

24 MS. SAMORA: I think "associates" is just not clear.

25 MR. THUROW: "Associate" colleague or "associate"



1 something.

2 CHAIRMAN BRASHER: It's interaction with other  
3 licensees. So G should read, "Interaction with other  
4 licensees." Is there any more discussion on that? Has  
5 everybody signed in?

6 MR. VALDEZ: Yes.

7 CHAIRMAN BRASHER: So right now I'm going to ask  
8 Mr. Valdez to mark the attendance sheet as --

9 MR. COOPER: Mr. Chairman, excuse me for  
10 interrupting. Board members, going back to Hank Rosoff's  
11 comments that we address his change in the paragraph numbering.  
12 We have B and F. We have B and E. He feels that there's  
13 something wrong with that section, the numbering sequence?

14 CHAIRMAN BRASHER: I didn't follow that,  
15 Mr. Cooper.

16 MR. COOPER: Mr. Rosoff says in 16.39.8.9, Subsection  
17 D6(A), the one we've been discussing, it should say  
18 subparagraph B and F instead of -- I think it says B and E. So  
19 I didn't know if that was a proper change or not. And then  
20 also he said 9 in paragraph 1 of, Section 8.

21 CHAIRMAN BRASHER: All right. Tell me where this  
22 would be written and how it would read.

23 MR. COOPER: His recommendation was to change  
24 subparagraph B and E to E and F. I don't know if that's a typo  
25 or it was the intent to --

1 CHAIRMAN BRASHER: This is on line 6A, correct?

2 MR. BOHANNAN: My understanding of what he's trying  
3 to say is that subparagraphs D, A should be subparagraph B and  
4 F from the first page and reference that section and then add  
5 .9 to the end of that one. So the issue is is E a reason or F  
6 is a reason to add it in section D under the professional  
7 relationships with employer or client. So I think what we have  
8 to look at is under the first page under E, "Refuse to  
9 associate in a business venture with any person or firm whom  
10 they may have reason to believe is engaging in fraudulent or  
11 dishonest business or professional practices as an engineer or  
12 surveyor and refuse to use or permit the use of their name or  
13 firm in connection with any such business venture." Is that  
14 appropriate there, or is it F, "Inform the board of any  
15 violation of this code. Cooperate with the board in furnishing  
16 information or assistance as may be requested by the board in  
17 matters concerning violations." I think that's what he's  
18 trying to say. Is that your interpretation?

19 MR. COOPER: Yes, it is. Thank you.

20 MR. BOHANNAN: So with that in mind, I think he's  
21 basically saying that if you know a violation of a code, you've  
22 got to inform the board. That's what I think he's trying to  
23 say.

24 MR. VALDEZ: Mr. Chair, members of the board,  
25 referring back to the current administrative code that's now in

1 use, seeing section D6(A) and looking at Section A1, Section 1,  
2 I believe that is what Mr. Rosoff is indicating where it says,  
3 "inform the board of any known violation of these rules of  
4 professional conduct," et cetera, et cetera. Because under the  
5 current administrative code, that's what Section E is. So I  
6 think that's what he's referring to.

7 MR. BOHANNAN: So this is a true typo. In your  
8 opinion, it should be F.

9 MR. VALDEZ: Correct.

10 MR. BOHANNAN: Mr. Chair, I would concur with that if  
11 the rest of the board is okay.

12 CHAIRMAN BRASHER: And you're changing 16.39.8.

13 MR. BOHANNAN: To add the .9 after 8 in front of the  
14 NMAC.

15 CHAIRMAN BRASHER: Thank you, Mr. Cooper. Does  
16 anybody else have any comments on this? Did you get this,  
17 Perry?

18 MR. VALDEZ: Yes.

19 CHAIRMAN BRASHER: Is there anything else on this or  
20 any of the other exhibits? Well, then I would like --  
21 Mr. Valdez, did you label any other exhibits?

22 MR. VALDEZ: Yes.

23 CHAIRMAN BRASHER: Do you have other exhibits that we  
24 have to enter into the record?

25 MR. VALDEZ: Mr. Chair, members of the board, we have

1 the attendance sheet as Exhibit 19 to be entered into the  
2 record.

3 CHAIRMAN BRASHER: Okay. Does anybody have any  
4 questions? We had some submittals, some documents handed to  
5 you. Did you enter those into the record?

6 MR. VALDEZ: We entered in the exhibit from  
7 Mr. Medina as Exhibit Number 18. And the sign-in sheet, the  
8 attendance sheet as Exhibit 19.

9 MR. THUROW: And Mr. Cooper's standard of care, was  
10 that entered as an exhibit?

11 MR. VALDEZ: No, that was not. Therefore,  
12 Mr. Cooper's standard of care will be Exhibit 19, and the  
13 attendance sheet will be Exhibit 20.

14 CHAIRMAN BRASHER: Are there any others? Hearing  
15 none, the comments submitted and the discussion heard during  
16 the rule hearing will be considered and may be discussed  
17 further by the board during the regular meeting following the  
18 rule hearing. The board will vote on the proposed rules at  
19 that time. Any rules adopted by the board will be filed at  
20 state records and archives in accordance with the state Rules  
21 Act and New Mexico Register publication deadlines. The adopted  
22 rules will become effective 30 days after they are filed at  
23 records and archives unless otherwise noted at the end of a  
24 section. Any rules not adopted may be postponed for future  
25 discussion at a definite time in the future or may be postponed

1 indefinitely. I'd like to thank all the board members,  
2 Mr. Valdez, board staff and Mr. Word and everyone else present  
3 for the participation in attendance today.

4 We're going to take a break now to allow the  
5 staff to set up for the regular meeting and we'll begin the  
6 regular meeting immediately following that. And the break is  
7 an hour. Mr. Valdez needs some time to get ready for the board  
8 meeting, don't you? Do you need time?

9 MR. VALDEZ: I'm pretty much set up as it is.

10 (The hearing was adjourned at 2:24 p.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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REPORTER'S CERTIFICATE

8

BE IT KNOWN that the foregoing transcript of  
9 proceedings was taken by me; that I was then and there a  
10 Certified Court Reporter in and for the County of Bernalillo,  
11 State of New Mexico, and by virtue thereof, authorized  
12 to administer an oath.

13

That the foregoing 116 pages contain a true and  
14 accurate transcript of the proceedings, all to the best of my  
15 ability.

16

I FURTHER CERTIFY that I am not related to nor employed  
17 by any of the parties hereto, and have no interest in the  
18 outcome hereof.

19

DATED at Albuquerque, New Mexico this 20th day of April,  
20 2015.

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Christopher R. Sanchez  
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